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## **EXHIBIT 15**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
<hr/>		
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

**DECLARATION OF DENNIS C. SAUTER, JR.**

I, Dennis C. Sauter, Jr., hereby swear under oath and penalty of perjury pursuant to the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

1. My name is Dennis C. Sauter, Jr. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration. I have personal knowledge of the facts stated in this Declaration, or such facts are known to me from my review of the books and records of Highland Capital Management Fund Advisors, L.P. ("HCMFA").

2. I am an attorney licensed to practice law in the State of Texas and have been such since 2001.



3. While I provided limited legal services to Highland Capital Management, L.P. (the “Debtor”) and its affiliated entities as outside counsel before I became in-house counsel, those services were limited to real estate transactions having nothing to do with the facts discussed in this Declaration.

4. HCMFA is a registered advisor under the Investment Advisors Act of 1940. CITE. As such, HCMFA advises various independent funds, which, in turn, are investment vehicles for a large number of investors.

5. HCMFA has always had very few employees. During 2019, for example, HCMFA had only 7 to 9 employees.

6. Instead, most of the services needed by HCMFA to transact its business were provided by the Debtor pursuant to that certain *Second Amended and Restated Shared Services Agreement* dated February 8, 2013 (the “Shared Services Agreement”), a true and correct copy of which is attached hereto as Exhibit 1.

7. This was standard business practices for the Debtor and various other affiliated companies, including other advisers within the Debtor’s and its affiliates “complex” of businesses: the Debtor would employ most of the employees and then share those employees with HCMFA and other “complex” entities in exchange for payments by HCMFA and such other entities.

8. Thus, under the Shared Services Agreement, employees of the Debtor (many of whom were highly trained and specialized) provided many of the key services to HCMFA on an as-needed basis. These services included legal, accounting, regulatory, compliance, IT, and tax services, among others. Additionally, under the Shared Services Agreement the Debtor provided critical electronic infrastructure to HCMFA and other “complex” entities, such that the books and records, and e-mail communications, of HCMFA were actually stored on the Debtor’s server.

9. These facts are very important to the issues I will discuss below.

10. On January 22, 2021, the Debtor filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* (the "Complaint") against HCMFA, thereby initiating this Adversary Proceeding.

11. The Complaint concerns two promissory notes each dated May 2, 2019 (the "Notes") that the Debtor seeks a judgment against HCMFA for: (i) a note for \$5 million; and (ii) a note for \$2.4 million.

12. On March 1, 2021, HCMFA filed its *Defendant's Original Answer* (the "Answer").

13. At the time that the Debtor filed the Complaint, I promptly undertook an internal review of the background facts concerning the Notes. I had no knowledge of them since I had not been employed by HCMFA, and the few employees of HCMFA had no knowledge of the Notes. I also discussed the Notes with James Dondero, formerly the CEO of the Debtor, and Mr. Dondero could not recall the genesis of the Notes. My review of the limited books and records of HCMFA that were not in the possession of the Debtor did not reveal any background facts regarding the Notes or the existence of the Notes.

14. Normally, I would have discussed the Notes with employees of the Debtor who also provided services to HCMFA pursuant to the Shared Services Agreement in order to assess what defenses or affirmative defenses to the Complaint existed. However, in this instance I was precluded from doing so.

15. First, attached hereto as Exhibit 2 is a true and correct copy of an e-mail exchange between me and Mr. James Seery dated September 17, 2020. Mr. Seery was and remains the Chief Executive Officer of the Debtor. As stated in Exhibit 2, Mr. Seery was informing me that Debtor employees had been instructed not to discuss with me anything that is "inimical" to the interests of the Debtor, and that they would be terminated if they did so. This e-mail communication comports with other communications between myself and Mr. Seery and/or Debtor's counsel,

where I was cautioned not to discuss with Debtor employees matters that may be adverse to the Debtor.

16. Second, by the time of the filing of the Complaint, the Court had entered a preliminary injunction against Mr. Dondero, a true and correct copy of which is attached hereto as Exhibit 3. That injunction prohibited Mr. Dondero from “directly or indirectly . . . communicating with any of the Debtor’s employees, except as it specifically relates to shared services currently provided.” As the information concerning the Notes was background information and not related to “services currently provided,” I was concerned that, if I discussed the Notes with the Debtor’s employees, the Debtor would argue that either Mr. Dondero or I violated the Court’s injunction.

17. In sum, after the Complaint was filed, no one at HCMFA knew anything about the Notes, and I was precluded from contacting the people that would have known something about the notes, *i.e.* the Debtor’s employees, to discuss what they may have known. I also had very limited access to HCMFA books and records and, even if I had had full access, I would not have known what relevant books and records to search for in the many millions of files without first obtaining a generalized background of the facts regarding the Notes from Debtor employees.

18. I then worked with outside counsel at Munsch Hardt Kopf & Harr, P.C. to review the Complaint and prepare and file the Answer. That original Answer did not contain any affirmative defenses because, as explained above, no one at HCMFA knew of any facts that might give rise to an affirmative defense.

19. The situation changed by mid-April, 2021. As of late February, 2021, the Debtor terminated the Shared Services Agreement and terminated most of its former employees. Many of those employees then formed their own company, Skyview Group, which then contracted with HCMFA (and others) to continue providing essentially the same services that they had previously provided under the Shared Services Agreement. Additionally, the Debtor provided access to

HCMFA of much of its books and records (although not all). Thus, as of March, 2021, I was able to communicate with most former Debtor employees and to access the books and records of HCMFA without fear of violating any court order.

20. March, 2021, was exceedingly busy, to say the least. With the termination of the Shared Services Agreement, HCMFA, other entities that I am general counsel to, and I were preoccupied with transitioning the services that the Debtor had been providing for more than a decade to a new entity, using new infrastructure, new offices, new networks, etc., all for the primary goal of ensuring a smooth and uninterrupted continuity of business and services provided by HCMFA and others to third parties.

21. By mid-April, 2021, the situation had calmed down to the point that I was able to discuss the Notes with former employees, most importantly Frank Waterhouse ("Waterhouse") and Will Mabry ("Mabry"). Mabry in particular was able to provide me internal documents and memorandums that I had not previously known about or had access to that helped with the factual background of the Notes.

22. From these discussions and documents, I have been able to understand the factual background concerning the Notes, ultimately concluding that the Notes were signed by mistake by Waterhouse without authority from HCMFA and have no consideration and were never intended to be debt instruments of HCMFA.

23. My investigation has revealed the following.

24. One of the funds that HCMFA advises is Highland Global Allocation Fund ("GAF"). In March, 2018, GAF sold equity interests it held in TerreStar. As part of this, it was necessary to calculate the "net asset value" ("NAV") of these securities and of GAF assets. HCMFA was responsible for advising on the NAV. In turn, pursuant to the Shared Services Agreement and in accordance with applicable compliance and operating procedures, the Debtor



was responsible to HCMFA to calculate the NAV, and the Debtor had several employees charged with these and similar calculations as part of the Debtor's routine business services and as part of what the Debtor regularly provided to HCMFA and affiliated companies.

25. The Debtor made a mistake in calculating the NAV (the "NAV Error"). The NAV Error was discovered in early 2019 as GAF was being converted from an open-ended fund to a closed-ended fund. The Securities and Exchange Commission opened an investigation, and various employees and representatives of the Debtor, HCMFA, and GAF worked with the SEC to correct the error and to compensate GAF and the various investors in GAF harmed by the NAV Error.

26. Ultimately, and working with the SEC, the Debtor determined that the losses from the NAV Error to GAF and its shareholders amounted to \$7.5 million: (i) \$6.1 million for the NAV Error itself, as well as rebating related advisor fees and processing costs; and (ii) \$1.4 million of losses to the shareholders of GAF.

27. HCMFA accepted responsibility for the NAV Error and paid out \$5,186,496 on February 15, 2019 and \$2,398,842 on May 21, 2019. I am not sure of the flow of funds, whether the funds flowed through HCMFA or were paid by the Debtor on behalf of HCMFA, and discovery will likely clear that up. Either way, however, the payments were of HCMFA funds and on behalf of HCMFA.

28. In turn, the Debtor accepted responsibility to HCMFA for having caused the NAV Error, and the Debtor ultimately, whether through insurance or its own funds, compensated HCMFA for the above payments.

29. Returning to the Notes, Waterhouse was the Chief Financial Officer of both the Debtor and HCMFA during the above events and at the time he signed the Notes.

30. It appears clear that Waterhouse made a mistake in preparing and signing the Notes. First, , the Notes correspond very closely to the ultimate \$5,186,496 and \$2,398,842 payments. Second, it appears that Waterhouse assumed, incorrectly, that the funds being paid by the Debtor were a loan to HCMFA, instead of payments as compensation and restitution to HCMFA for the Debtor having caused the NAV Error. Third, it therefore appears that Waterhouse prepared the Notes for some internal accounting or other purpose, but without there being actual consideration for the Notes and without any intention on the part of the Debtor and HCMFA that there be Notes or that there be a loan transaction.

31. I also note that, as of May, 2019, HCMFA had executed other demand notes payable to the Debtor. On April 15, 2019, the Debtor executed that certain *Acknowledgement from HCMLP*, a true and correct copy of which is attached hereto as Exhibit 4. By the same, the Debtor agreed not to demand payment of these notes prior to May 31, 2021, because HCMFA believed that it would not be able to repay those notes prior to that time. It is illogical that, in light of the same, the Debtor would shortly thereafter lend an additional \$7.4 million to HCMFA. Rather, as my investigation has shown, the Debtor did not lend the funds to HCMFA but instead paid the funds, directly or indirectly, to compensate HCMFA for the NAV Error, which was the Debtor's error and therefore its obligation to correct and compensate for.

32. Therefore, in light of having learned of these facts in mid to late-April, 2019, HCMFA now believes that it has affirmative defenses to the Notes in the nature of mutual mistake, void for lack of consideration, and no proper authority of Waterhouse to sign the Notes.

33. Neither I, nor HCMFA, nor any of HCMFA's agents, have been less than diligent in investigating the Notes and the Complaint.

34. HCMFA respectfully requests that it be granted leave to assert these affirmative defenses in the Adversary Proceeding.

Signed: May 21, 2021

  
DENNIS C. SAUTER, JR.

## SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (this “**Agreement**”) is entered into to be effective as of 8<sup>th</sup> day of February, 2013 (the “**Effective Date**”) by and among Highland Capital Management, L.P., a Delaware limited partnership (“**HCMLP**”), and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P., a Delaware limited partnership (“**HCMFA**”), and any affiliate of HCMFA that becomes a party hereto. Each of the signatories hereto is individually a “**Party**” and collectively the “**Parties**”.

### RECITALS

A. During the Term, HCMLP will provide to HCMFA certain services as more fully described herein and the Parties desire to allocate the costs incurred for such services and assets among them in accordance with the terms and conditions in this Agreement.

### AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

### ARTICLE I DEFINITIONS

“**Actual Cost**” means, with respect to any period hereunder, one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period.

“**Affiliate**” means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term “**control**” (including, with correlative meanings, the terms “**controlled by**” and “**under common control with**”) means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Allocation Percentage**” has the meaning set forth in Section 4.01.

“**Applicable Margin**” shall mean an additional amount equal to 5% of all costs allocated by Service Provider to the other parties hereto under Article IV; provided that the parties may agree on a different margin percentage as to any item or items to the extent the above margin percentage, together with the allocated cost of such item or service, would not reflect an arm’s length value of the particular service or item allocated.

“**Change**” has the meaning set forth in Section 2.02(a).

“**Change Request**” has the meaning set forth in Section 2.02(b).

“**Code**” means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.



***“Effective Date”*** has the meaning set forth in the preamble.

***“Governmental Entity”*** means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

***“Liabilities”*** means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

***“Loss”*** means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term ***“Loss”*** will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

***“New Shared Service”*** has the meaning set forth in Section 2.03.

***“Party”*** or ***“Parties”*** has the meaning set forth in the preamble.

***“Person”*** means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

***“Quarterly Report”*** has the meaning set forth in Section 5.01.

***“Recipient”*** means HCMFA and any of HCMFA’s direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Shared Services and/or Shared Assets.

***“Service Provider”*** means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Shared Services or Shared Assets.

***“Service Standards”*** has the meaning set forth in Section 6.01.

***“Shared Assets”*** shall have the meaning set forth in Section 3.02.

***“Shared Services”*** shall have the meaning set forth in Section 2.01.

***“Subsidiary”*** means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

***“Tax”*** or ***“Taxes”*** means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

***“Term”*** has the meaning set forth in Section 7.01.



### ARTICLE III SHARED ASSETS

Section 3.01 Shared IP Rights. Each Service Provider hereby grants to Recipient a non-exclusive right and license to use the intellectual property and other rights granted or licensed, directly or indirectly, to such Service Provider (the “**Shared IP Rights**”) pursuant to third party intellectual property Agreements (“**Third Party IP Agreements**”), provided that the rights granted to Recipient hereunder are subject to the terms and conditions of the applicable Third Party IP Agreement, and that such rights shall terminate, as applicable, upon the expiration or termination of the applicable Third Party IP Agreement. Recipient shall be licensed to use the Shared IP Rights only for so long as it remains an Affiliate of HCMLP. In consideration of the foregoing licenses, Recipient agrees to take such further reasonable actions as a Service Provider deems to be necessary or desirable to comply with its obligations under the Third Party IP Agreements.

Section 3.02 Other Shared Assets. Subject to Section 3.01, each Service Provider hereby grants Recipient the right, license or permission, as applicable, to use and access the benefits under the agreements, contracts and licenses that such Service Provider will purchase, acquire, become a party or beneficiary to or license on behalf of Recipient (the “**Future Shared Assets**” and collectively with the Shared IP Rights, the “**Shared Assets**”).

### ARTICLE IV COST ALLOCATION

Section 4.01 Actual Cost Allocation Formula. The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, “**Allocation Percentage**” means:

- (a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;
- (b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and
- (c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.

Section 4.02 Non-Cash Cost Allocation. The actual, fully burdened cost of any item relating to any Shared Services or Shared Assets that does not result in a direct, out of pocket cash expense may be allocated to HCMLP and HCMFA for financial statement purposes only, as agreed by HCMFA, without any corresponding cash reimbursement required, in accordance with generally accepted accounting principles, based on the Allocation Percentage principles described in Section 4.01 hereof.

### ARTICLE V PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 5.01 Quarterly Statements. Within thirty (30) days following the end of each calendar quarter during the Term (or at such time as may be otherwise agreed by the parties), each Service Provider shall furnish the other Parties hereto with a written statement with respect to the Actual Cost paid by it in respect of Shared Services and Shared Assets provided by it, in each case, during such

Section 5.03 Determination and Payment of Cost and Revenue Share.

(b) Within ten (10) days of preparation of the agreement and the issuance of the invoice described in Section 5.03(a) (or at such other time as may be agreed by the parties), the Parties shall promptly make payment of the amounts that are set forth on such cost allocation invoice. Notwithstanding anything in this Agreement to the contrary, provision of the Shared Services shall commence from the Effective Date, but no fees shall be payable from Recipient or otherwise accrue with respect to such services provided during the month of December 2011.

(a) Recipient is responsible for and will pay all Taxes applicable to the Shared Services and the Shared Assets provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Shared Services and the Shared Assets as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider's business, but in no event prior to the time it invoices Recipient for the Shared Services and Shared Assets, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

5



indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 5.04 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

## ARTICLE VI SERVICE PROVIDER RESPONSIBILITIES

Section 6.01 Service Provider General Obligations. Service Provider will provide the Shared Services and the Shared Assets to Recipient on a non-discriminatory basis and will provide the Shared Services and the Shared Assets in the same manner as if it were providing such services and assets on its own account (the “*Service Standards*”). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 6.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records on behalf of Recipient in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Shared Services and Shared Assets, with respect to Service Provider’s performance of its obligations hereunder. This inspection right will include the ability of Recipient’s financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider’s and its Affiliates’ proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient’s request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 6.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider’s control or possession.

## ARTICLE VII TERM AND TERMINATION

Section 7.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the “*Term*”), unless terminated earlier in accordance with Section 9.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 7.02.



Section 9.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i) immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: General Counsel  
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: General Counsel  
Fax: (972) 628-4147

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.









## Compliance

## Facilities

Finance &amp; Accounting

HR

IT

Legal

Marketing and PR

Tax

## Investments

Investment research on an ad hoc basis as requested by HCMFA

Valuation Committee

## Trading

Trading desk services

## Operations

Trade settlement

**From:** James Seery <jpseeryjr@gmail.com>  
**Sent:** Thursday, September 17, 2020 4:17 PM  
**To:** DC Sauter  
**Cc:** Gregory V. Demo  
**Subject:** Re: Acis Settlement

DC

I believe your concerns regarding the release are misplaced as it does not bind entities that HCMLP does not control. Greg can walk you through the language, but I do not believe it requires adjustment nor does it create any liability. To the contrary, it reduces liability.

With regard to the HCMLP employee prohibitions, no employee whether legal or non-legal can work on any matter that is inimical to the interests of HCMLP. I, as CEO, and the Independent Board will make the determination as to whether an action violates the prohibition, and a breach of the prohibition will lead to termination for cause. I believe that most of the employees have been informed of this requirement and are following the directive.

With regard to transactional matters, HCMLP employees will continue to work with you on those issues that do not run afoul of the prohibition above. If there is a particular matter where you are taking a potentially adversarial action vis a vis HCMLP, please let me know what it is. We can then consider whether a customized operating protocol for that issue is needed or whether you will simply be on your own. I will make the determination with the advice of counsel. We do not believe the Texas rules of professional responsibility apply in this situation.

Please let me know what matter you are considering with respect to the immediately preceding paragraph, and we will consider how to best address your concerns.

Best. Jim

Jim Seery  
631-804-2049  
jpseeryjr@gmail.com

**From:** DC Sauter <DSauter@NexPointadvisors.com>  
**Date:** Thursday, September 17, 2020 at 4:56 PM  
**To:** Jim Seery <jpseeryjr@gmail.com>  
**Cc:** Greg Demo <GDemo@pszjlaw.com>  
**Subject:** RE: Acis Settlement

Jim/Greg, follow up on my email below. I have a few items that have been placed on my plate, and I really need to understand who I can speak with and the extent to which they are permitted to share information with me.

**D.C. SAUTER**

**NEXPOINT**



**From:** DC Sauter  
**Sent:** Tuesday, September 15, 2020 8:55 AM  
**To:** 'James Seery' <jpseeryjr@gmail.com>  
**Cc:** Gregory V. Demo <GDemo@pszjlaw.com>  
**Subject:** RE: Acis Settlement

My apologies for copying Isaac. I was under the mistaken impression that he would have assisted in the settlement.

In my view, the requested clarification is beneficial to Strand, HCMLP, and the other "HCMLP Entities." The documents purport to release ACIS from claims on behalf of, among others, any entity that is "managed" by HCMLP and "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns" of any "HCMLP Entity." Those "HCMLP Entities" lack the authority to bind a whole host of parties in that laundry list, which could result in claims against HCMLP, Strand, and the other "HCMLP Entities" by both the "ACIS Released Parties," who will claim they didn't receive the benefit of the bargain, and the parties on whose behalf the "HCMLP Parties" purported to release claims who didn't consent to the release.

Additionally, I'd like to visit with you all regarding the board's position that prohibits certain HCMLP personnel from working on certain matters.

First, I am unclear whether the prohibition applies to only HCMLP legal personnel or whether it applies to all HCMLP employees. Please clarify.

Second, as you may know, virtually all of these matters are falling into my lap, and in most cases I lack any knowledge about them. It would help me tremendously if current HCMLP employees, and particularly the legal personnel, could provide me with transactional background to assist in the transition of the matter. While I understand the board's concern with Judge Jernigan's order, I don't believe that the Texas Disciplinary Rules of Professional Conduct mandate or even permit an attorney licensed in the State of Texas to refuse to cooperate with a former client in the transfer of a matter to a new attorney. Rule 1.15(d) states that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned." The comments to that rule provide additional clarity: "In every instance of withdrawal and even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client." T.D.R.P.C. Rule 1.15, comment 9. Proper steps may include providing information to new counsel or even continuing to represent the client for a limited time to meet impending deadlines. *Microsoft Corp. v. Commonwealth Sci. & Indus. Research Org.*, 2007 U.S. Dist. LEXIS 91550 \*23-24 fn. 11 (E.D. Tex. Dec. 13, 2007). Even if the board insists that the HCMLP legal personnel cannot continue to represent others in non-HCMLP matters or matters adverse to HCMLP (irrespective of any conflict of interest analysis of whether those attorneys may continue to represent HCMLP in those matters), the ethical rules require that the attorneys provide assistance in transferring those matters to me or others.

Finally, I routinely handle, and am routinely asked to handle, legal matters that relate to real estate for entities owned or controlled by HCMLP (Park West, the Arizona assets, the Maple Ave. property, to name a few). I am not an HCMLP employee, and it's my understanding that NexPoint Advisors, L.P. is not compensated for the time I spend on HCMLP matters. I'm not suggesting that this arrangement should change, but it feels from my perspective that the board's position is only working in one direction. In other words, if I understand the board's position correctly, I can work on both NexPoint and HCMLP matters, but the HCMLP legal employees may only work on HCMLP-related matters. It has also put a significant amount of additional work on my plate. I would like to understand two things. First, what is the scope of my authority in these matters, and what is the proper protocol vis-à-vis you, DSI, and the board? I have tried to take the conservative approach in keeping you all informed and asking for consent or approval where I thought it

**D.C. SAUTER**



DC. We will discuss and revert to you. Neither Isaac nor anyone else at HCMLP is permitted to work on any issues related to the settlement and release other than as directed by me.

Sent from my iPad

I've been asked to review the attached release on behalf of HCMFA and the closed-end funds. I'm concerned that the language below creates an ambiguity as to whether the closed-end funds and HCMFA have released claims against the ACIS parties:

- We would like the final sentence in paragraph 1.a. of the Release to be revised to specifically identify HCMFA and the closed-end funds as parties not covered by the release. Please let me know if you'd like to discuss in more detail.

300 Crescent Court | Suite 700 | Dallas, Texas 75201  
O: 972.628.4117 | C: 469.877.6440 | F: 972.628.4147  
[dsauter@nexpointadvisors.com](mailto:dsauter@nexpointadvisors.com) | [www.NexPointGroup.com](http://www.NexPointGroup.com)

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PRIVILEGE WARNING: The sender or recipient of this message is a member of the legal department at Highland Capital Management. This message and any attachments hereto may constitute attorney work product or be protected by the attorney-client privilege. Do not disclose this message or any attachments hereto without prior consent of a member of the legal department at Highland Capital Management.

<Acis - Release (EXECUTION VERSION).pdf>



**CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS**

# ENTERED

**THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET**

**The following constitutes the ruling of the court and has the force and effect therein described.**

**Signed January 11, 2021**

Harry G. C. Jones  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

VS.

JAMES D. DONDERO,

Defendant.

[illegible]

Chapter 11

Case No. 19-34054-sgj11

Adversary Proceeding No.

No. 20-03190-sgj

## ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on *Plaintiff Highland Capital Management*,

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

*L.P.’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. **Docket No. 2**] (the “Motion”), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.’s Verified Original Complaint for Injunctive Relief* [Adv. Pro. **Docket No. 1**] (the “Complaint”), (c) the arguments and law cited in the *Debtor’s Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. **Docket No. 3**] (the “Memorandum of Law,” and together with the Motion and Complaint, the “Debtor’s Papers”), (d) *James Dondero’s Response in Opposition to Debtor’s Motion for a Preliminary Injunction* [Adv. Pro. **Docket No. 52**] (the “Opposition”) filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the “Hearing”), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor’s Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. **Docket No. 6**] (the “TRO Hearing”); and this Court having jurisdiction over this matter pursuant to **28 U.S.C. §§ 157** and **1334**; and this Court having found that this is a core proceeding pursuant to **28 U.S.C. § 157(b)(2)**; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to **28 U.S.C. §§ 1408** and **1409**; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest;



and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the “Prohibited Conduct”).<sup>2</sup>

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor’s computer, email, or information systems, the Debtor’s offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor’s affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor’s counsel made to Mr. Dondero’s counsel. If Mr. Dondero enters the Debtor’s office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor’s case becomes effective, unless otherwise ordered by the Court.

---

<sup>2</sup> For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the “UCC”) and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.
9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

**### END OF ORDER ###**

### Acknowledgement from HCMLP

April 15, 2019

Reference is hereby made to certain outstanding amounts loaned from HIGHLAND CAPITAL MANAGEMENT, L.P. ("HCMLP") to HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. ("HCMF") for funding of HCMF's ongoing operations, which are payable on demand and remained outstanding on December 31, 2018 and as of the date hereof.

HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021.

HCMLP hereby agrees to not demand payment on amounts owed by HCMF prior to May 31, 2021.

Highland Capital Management, L.P.  
By: Strand Advisors, Inc., its general partner

By: 

### Acknowledged By:

Highland Capital Management Fund Advisors, L.P.  
By: Strand XVI, Inc., its general partner

By: 

EXHIBIT 4

## **EXHIBIT 16**



---

**From:** David Klos <DKlos@HighlandCapital.com>  
**Sent:** Friday, February 02, 2018 2:16 PM  
**To:** Corporate Accounting  
**Cc:** Melissa Schroth  
**Subject:** \$3.825mm to Jim

Blair,  
Please set up \$3.825mm to go to Jim this afternoon. Frank has approved.

Drew, this is a new loan.

DAVID KLOS | CONTROLLER



300 Crescent Court | Suite 700 | Dallas, Texas 75201  
C: 214.674.2926 | O: 972.419.4478 | F: 972.628.4147  
[dklos@highlandcapital.com](mailto:dklos@highlandcapital.com) | [www.highlandcapital.com](http://www.highlandcapital.com)

## **EXHIBIT 17**

---

**From:** Blair Hillis <BHillis@HighlandCapital.com>  
**Sent:** Wednesday, August 01, 2018 1:12 PM  
**To:** David Klos; Corporate Accounting  
**Cc:** Melissa Schroth  
**Subject:** RE: \$2.5mm loan to Dondero

Funds have been transferred to Jim's account. Thanks!

Kind Regards,  
Blair Roeber

---

**From:** David Klos  
**Sent:** Wednesday, August 1, 2018 10:47 AM  
**To:** Corporate Accounting  
**Cc:** Melissa Schroth  
**Subject:** \$2.5mm loan to Dondero

Jim has authorized a \$2.5mm loan from HCMLP to Dondero.

Blair, can you please set up this wire today?  
Drew, can you please draw up loan docs for execution?

DAVID KLOS | CONTROLLER



300 Crescent Court | Suite 700 | Dallas, Texas 75201  
C: 214.674.2926 | O: 972.419.4478 | F: 972.628.4147  
[dklos@highlandcapital.com](mailto:dklos@highlandcapital.com) | [www.highlandcapital.com](http://www.highlandcapital.com)

## **EXHIBIT 18**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re: )Chapter 11  
)  
HIGHLAND CAPITAL MANAGEMENT, LP, )  
)Case No.  
Debtor. )19-34054-SGJ-11  
)  
HIGHLAND CAPITAL MANAGEMENT, LP, )  
)  
Plaintiff, )  
)  
vs. )Advisory Proceeding No.  
)21-03004  
NEXPOINT ADVISORS, LP; JAMES )  
DONDERO; NANCY DONDERO; and THE )  
DUGABOY INVESTMENT TRUST, )  
)  
Defendants. )

\*\*\*\*\*

REMOTE DEPOSITION OF  
DUSTIN NORRIS  
December 1, 2021

\*\*\*\*\*

DUSTIN NORRIS, produced as a witness at the  
instance of the Highland Capital Management, was  
duly sworn and deposed in the above-styled and  
numbered cause on December 1, 2021, from  
10:01 a.m. CST to 3:25 p.m. CST, stenographically  
reported, pursuant to the Federal Rules of Civil  
Procedure and the provisions stated on the record.

Job Number: 203362  
Reported by: Rebecca A. Graziano, CSR, RMR, CRR  
Texas CSR 9306  
California CSR 14407  
Illinois CSR 084.004659



<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2 (all attendees appearing via remote videoconference)</p> <p>3</p> <p>4 REPRESENTING HIGHLAND CAPITAL MANAGEMENT, LP:</p> <p>5 John Morris, Esq.</p> <p>6 Hayley Winograd, Esq.</p> <p>7 PACHULSKI STANG ZIEHL &amp; JONES LLP</p> <p>8 780 Third Avenue</p> <p>9 New York City, New York 10017</p> <p>10 REPRESENTING NEXPOINT ADVISORS, LP:</p> <p>11 Davor Rukavina, Esq.</p> <p>12 MUNSCH HARDT KOPF &amp; HARR, PC</p> <p>13 500 North Akard Street</p> <p>14 Dallas, Texas 75201</p> <p>15 REPRESENTING JAMES DONDERO, NANCY DONDERO, HCRE,</p> <p>16 and HCMS:</p> <p>17 Michael Aigen, Esq.</p> <p>18 STINSON LLP</p> <p>19 3102 Oak Lawn Avenue</p> <p>20 Dallas, Texas 75219</p> <p>21 ALSO PRESENT:</p> <p>22 La Asia Canty, Paralegal,</p> <p>23 Pachulski Stang Ziehl &amp; Jones</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3</p> <p>4</p> <p>5</p> <p>6 EXAMINATION BY MR. MORRIS..... 5</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 EXHIBITS</p> <p>15 NUMBER DESCRIPTION PAGE</p> <p>16 Exhibit 185 Plaintiff's Third Amended Notice of</p> <p>17 Rule 30(b)(6) Deposition to</p> <p>18 Highland Capital Management Fund</p> <p>19 Advisors..... 7</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>14 PREVIOUSLY MARKED EXHIBITS</p> <p>15 NUMBER DESCRIPTION PAGE</p> <p>16 Exhibit 1 Complaint for (I) Breach of</p> <p>17 Contract and (II) Turnover of</p> <p>18 Property of the Debtor's Estate..... 38</p> <p>19 Exhibit 5 Defendant's Original Answer..... 29</p> <p>20 Exhibit 13 Defendant's Amended Answer..... 158</p> <p>21 Exhibit 36 Email Chain; Bates D-HCMFA290880</p> <p>22 through 290883..... 87</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1 PREVIOUSLY MARKED EXHIBITS</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 45 Highland Capital Management Fund</p> <p>4 Advisors, LP, Consolidated</p> <p>5 Financial Statements and</p> <p>6 Supplemental Information, 12/31/18;</p> <p>7 Bates D-CNL-002273 through 002296.... 46</p> <p>8 Exhibit 59 Supplemental 15(c) Info Request;</p> <p>9 Bates HCMFAS 000025 through 000031... 71</p> <p>10 Exhibit 147 BBVA Compass Bank Statement, Date</p> <p>11 Ending 5/31/19 (no Bates range)..... 51</p> <p>12 Exhibit 182 Memo Dated 5/28/19 (no Bates range).. 119</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 PROCEEDINGS</p> <p>2 (On the record at 10:01 a.m. CST)</p> <p>3 (Witness duly sworn.)</p> <p>4 DUSTIN NORRIS,</p> <p>5 being first duly sworn, testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. MORRIS:</p> <p>8 Q Good morning, Mr. Norris. As you may</p> <p>9 recall, my name is John Morris. I'm an attorney</p> <p>10 at Pachulski Stang Ziehl &amp; Jones, and we're</p> <p>11 counsel to the reorganized debtor known as</p> <p>12 Highland Capital Management, LP, and we're here</p> <p>13 for your deposition today.</p> <p>14 Do you understand that?</p> <p>15 A Yes, sir.</p> <p>16 Q And do you understand that you're being</p> <p>17 deposed today in your capacity as what's called a</p> <p>18 Rule 30(b)(6) witness on behalf of Highland</p> <p>19 Capital Management Fund Advisors, LP?</p> <p>20 A I do.</p> <p>21 Q Can we refer to Highland Capital</p> <p>22 Management Fund Advisors, LP, as "HCMFA"?</p> <p>23 A Yes, that works.</p> <p>24 Q And can we refer to Highland Capital</p> <p>25 Management, LP, as either "Highland" or "HCMLP"?</p>

<p style="text-align: right;">Page 6</p> <p>1 Dustin Norris</p> <p>2 A Yes.</p> <p>3 Q Okay. Are you aware that your answers</p> <p>4 today will bind HCMFA?</p> <p>5 A Generally, yes.</p> <p>6 Q Okay. Have you seen the notice that was</p> <p>7 served by Highland on HCMFA in connection with</p> <p>8 this deposition?</p> <p>9 A I have.</p> <p>10 Q Okay. I've -- I've examined you before;</p> <p>11 right?</p> <p>12 A Yes.</p> <p>13 Q Okay. So the rules are the exact same,</p> <p>14 and they are very simple. If I ask a question, I</p> <p>15 would ask you to refrain from answering until I've</p> <p>16 completed my question; is that fair?</p> <p>17 A Yes, it is. Thank you.</p> <p>18 Q And if I begin a question or respond</p> <p>19 before you've completed your answer, will you let</p> <p>20 me know that?</p> <p>21 A Yes.</p> <p>22 Q We're going to be putting documents up on</p> <p>23 the screen from time to time today. If at any</p> <p>24 time you believe you need to see other portions of</p> <p>25 the document in order to give complete and</p>	<p style="text-align: right;">Page 7</p> <p>1 Dustin Norris</p> <p>2 accurate answers, will you let me know that?</p> <p>3 A Yes.</p> <p>4 Q If you need a break at any time, will you</p> <p>5 let me know that as well?</p> <p>6 A I will.</p> <p>7 Q Okay.</p> <p>8 MR. MORRIS: I would ask my</p> <p>9 colleague, Ms. Canty, to put up on the</p> <p>10 screen the Rule 30(b)(6) deposition</p> <p>11 notice.</p> <p>12 (Norris Exhibit 185 marked.)</p> <p>13 (Reporter discussion off the record.)</p> <p>14 MR. MORRIS: Okay. Asia, what</p> <p>15 exhibit number should we put on this</p> <p>16 document?</p> <p>17 MS. CANTY: 185.</p> <p>18 MR. MORRIS: Okay. Davor and</p> <p>19 Michael, this will be Exhibit 185.</p> <p>20 And if we can scroll down and show</p> <p>21 it to Mr. Norris.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q Do you see that this is the plaintiff's</p> <p>24 third amended notice of deposition for today?</p> <p>25 MR. RUKAVINA: And just so you</p>
<p style="text-align: right;">Page 8</p> <p>1 Dustin Norris</p> <p>2 know, John and Dustin, I did not send this</p> <p>3 to you, Dustin. All that it does is</p> <p>4 changes the time of today's deposition.</p> <p>5 It's identical to the last one that you</p> <p>6 did get.</p> <p>7 THE WITNESS: Okay. And I have the</p> <p>8 last one here with me as well.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q Okay. So there's no -- I'll represent to</p> <p>11 you that there's no difference between the one</p> <p>12 that's on the screen and the one you have except</p> <p>13 that the one on the screen says "Third Amended</p> <p>14 Notice," and it was scheduled for 9:00 today.</p> <p>15 It's scheduled for 10:00 today, the -- the time</p> <p>16 that we're beginning.</p> <p>17 Do you have any other documents in</p> <p>18 front of you other than the deposition notice?</p> <p>19 A I do.</p> <p>20 Q What -- what other documents do you have</p> <p>21 before you?</p> <p>22 A Yeah. I have the original complaint I</p> <p>23 believe it's called -- forgive me if I call them</p> <p>24 the wrong items --</p> <p>25 Q Uh-huh.</p>	<p style="text-align: right;">Page 9</p> <p>1 Dustin Norris</p> <p>2 A -- but the original complaint from HCMLP.</p> <p>3 I have the original answer response from HCMFA. I</p> <p>4 have the amended response. I have the declaration</p> <p>5 from Mr. Sauter. I have copies of the promissory</p> <p>6 notes. I have the shared services agreement. I</p> <p>7 have a -- incumbency certificates, which will help</p> <p>8 me respond to one of your questions in the</p> <p>9 30(b)(6) notice. And I have a board to the</p> <p>10 memo [sic] regarding NAV error, and I have the</p> <p>11 "Defendant's Second Motion for Leave to Amend</p> <p>12 Answer and Brief in Support Thereof" that was</p> <p>13 filed yesterday.</p> <p>14 So a number of documents that -- and I</p> <p>15 also have up on my screen your exhibits that I</p> <p>16 believe we'll be going through in one of the --</p> <p>17 let me check here -- Topic Number 5. So I have</p> <p>18 open, you know, a 650-page document that was filed</p> <p>19 in <b>Docket 35</b> on May 24th, I believe, is the</p> <p>20 correct document. So those are the materials that</p> <p>21 I have.</p> <p>22 Q Excellent. I appreciate that.</p> <p>23 So you've seen -- you've seen at least</p> <p>24 the plaintiff's second amended notice of</p> <p>25 Rule 30(b)(6) deposition before today. Do I have</p>

<p style="text-align: right;">Page 10</p> <p>1 Dustin Norris</p> <p>2 that right?</p> <p>3 A That's correct.</p> <p>4 Q And you have that with you; right?</p> <p>5 A I do.</p> <p>6 Q Okay. Are you prepared to testify on</p> <p>7 behalf of HCMFA today on -- in connection with</p> <p>8 each of the topics in the deposition notice?</p> <p>9 A Yes, I am.</p> <p>10 Q All right.</p> <p>11 MR. MORRIS: Let's just, for the</p> <p>12 record, scroll down to make sure that the</p> <p>13 topics are the same as the -- the one that</p> <p>14 Mr. Norris has in front of him.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q Do you see the first five topics on the</p> <p>17 screen?</p> <p>18 A I do.</p> <p>19 Q All right. Can you confirm that they're</p> <p>20 the same topics that you have in the second</p> <p>21 amended notice of deposition?</p> <p>22 A Yes. I'm looking now.</p> <p>23 Yes, they all are the same.</p> <p>24 Q Okay. And if we can continue to scroll</p> <p>25 down, you see Topics 6, 7, and 8 up on the screen,</p>	<p style="text-align: right;">Page 11</p> <p>1 Dustin Norris</p> <p>2 and 9. Are they the same as what you have?</p> <p>3 A Can you scroll down for 9?</p> <p>4 Q Uh-huh.</p> <p>5 A They look to be the same, yes.</p> <p>6 Q Okay. And let's just look at the last</p> <p>7 few. How about 10 through 14? Are they the same</p> <p>8 as the topics that are in your second amended</p> <p>9 notice?</p> <p>10 A They look to be the same, yes.</p> <p>11 Q Okay. And did you do anything to prepare</p> <p>12 for today's deposition?</p> <p>13 A I did.</p> <p>14 Q What did you do?</p> <p>15 A I reviewed all of the pleadings. I</p> <p>16 reviewed all of the -- the documents that were, I</p> <p>17 believe, responsive to -- to help me to respond to</p> <p>18 this, look through your exhibits. I had met with</p> <p>19 Mr. Rukavina as counsel. I met and spoke with</p> <p>20 Mr. Dondero. I spoke with Jason Post.</p> <p>21 I spoke with -- I reviewed my</p> <p>22 documents internally and emails, things that I</p> <p>23 might have had, confirmed with our IT group that</p> <p>24 they have provided all documents responsive to</p> <p>25 your discovery requests.</p>
<p style="text-align: right;">Page 12</p> <p>1 Dustin Norris</p> <p>2 I reviewed the depositions of</p> <p>3 Mr. Seery, of Frank Waterhouse, Dave Klos, and</p> <p>4 Kristin Hendrix. I met in person and by Zoom with</p> <p>5 Mr. Rukavina over the last few weeks, and -- so</p> <p>6 that -- that's the general -- you know, there may</p> <p>7 have been other things, but that's the general</p> <p>8 overview of the things that I did --</p> <p>9 Q I appreciate --</p> <p>10 A -- to understand the company's position.</p> <p>11 Q I appreciate that.</p> <p>12 So just focusing in on the people that</p> <p>13 you spoke with in connection with your</p> <p>14 preparation, one was Davor; right?</p> <p>15 A Correct.</p> <p>16 And I -- I may have -- I don't know if</p> <p>17 I said it or not, but DC Sauter as well I also</p> <p>18 spoke with.</p> <p>19 Q Okay. So the other people are DC Sauter,</p> <p>20 Jason Post, and Mr. Dondero. Do I have that</p> <p>21 right?</p> <p>22 A Correct.</p> <p>23 Q Did you speak with Frank Waterhouse at</p> <p>24 all?</p> <p>25 A No, I did not.</p>	<p style="text-align: right;">Page 13</p> <p>1 Dustin Norris</p> <p>2 Q Is there any particular reason you didn't</p> <p>3 speak with Mr. Waterhouse?</p> <p>4 A Yes.</p> <p>5 Q And what -- why didn't you speak with</p> <p>6 Mr. Waterhouse?</p> <p>7 A My -- my -- yeah, sorry.</p> <p>8 My understanding is his counsel did</p> <p>9 not allow us to speak with him regarding this,</p> <p>10 because HCMLP had sued him for various things, and</p> <p>11 so we weren't allowed to talk with him.</p> <p>12 You'll -- you'll note that DC, earlier</p> <p>13 on, had spoken to him. I believe that was back in</p> <p>14 April, if you look back and I'd refer you to</p> <p>15 Mr. Sauter's declaration. But in preparation for</p> <p>16 this, we did not speak with him. We needed to</p> <p>17 wait for his deposition based on his attorney's</p> <p>18 instructions.</p> <p>19 Q How many times did you speak with</p> <p>20 Mr. Dondero about today's deposition?</p> <p>21 A Multiple times over the last few weeks.</p> <p>22 Q And was Mr. Rukavina present for those</p> <p>23 discussions?</p> <p>24 A He was not.</p> <p>25 Q Can you tell me what you discussed with</p>

<p style="text-align: right;">Page 14</p> <p>1 Dustin Norris</p> <p>2 Mr. Dondero about today's deposition?</p> <p>3 A Yeah. Discussed with him general view of</p> <p>4 the company from his perspective. We discussed</p> <p>5 particularly around – and we'll get into more</p> <p>6 details on this – but around the purpose and</p> <p>7 transfer of cash, the seven-and-a-half million</p> <p>8 dollars. And I guess there were two transactions.</p> <p>9 Discussed with him what he remembered</p> <p>10 in discussions with Frank Waterhouse when he</p> <p>11 instructed him to transfer the cash, and any</p> <p>12 recollection he had regarding the notes or the –</p> <p>13 the – the promissory notes.</p> <p>14 And so those were the general topics.</p> <p>15 And we did talk about –</p> <p>16 Q Did Mr. –</p> <p>17 A Sorry. Go ahead.</p> <p>18 Q Yeah, I don't mean to step on your words.</p> <p>19 A No, no.</p> <p>20 We talked about the NAV error, we</p> <p>21 talked about responsibility for the NAV error and</p> <p>22 those aspects as well.</p> <p>23 Q Did – did Mr. Dondero tell you when he</p> <p>24 first learned of the existence of the notes?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 15</p> <p>1 Dustin Norris</p> <p>2 Q Did you ask him in connection with your</p> <p>3 preparation for today's deposition?</p> <p>4 A What I did ask, I asked him – I said,</p> <p>5 "Did you tell Frank Waterhouse that there should</p> <p>6 be – that this should be a loan?"</p> <p>7 And his response was, "No, that I</p> <p>8 never told Frank it should be a loan, and Frank</p> <p>9 never asked if it should be a loan." And that the</p> <p>10 intent – and the reason for the transfer was</p> <p>11 compensation for the NAV error.</p> <p>12 And so that was – he did not know –</p> <p>13 and if I – if I remember correctly, looking at</p> <p>14 his deposition, I believe he did not know about</p> <p>15 the notes at that time and found out about them</p> <p>16 much later.</p> <p>17 Q I know, and I'm trying to understand from</p> <p>18 you if you can tell me, as HCMFA's 30(b)(6)</p> <p>19 representative, whether you can share with me when</p> <p>20 Mr. Dondero first learned of the existence of the</p> <p>21 notes.</p> <p>22 A It – it would have been – I believe, if</p> <p>23 my understanding is correct, it would have been</p> <p>24 after they were demanded.</p> <p>25 Q After they were?</p>
<p style="text-align: right;">Page 16</p> <p>1 Dustin Norris</p> <p>2 A Demanded.</p> <p>3 Q Okay. How about your conversations with</p> <p>4 Mr. Post? Did the subject of when he learned</p> <p>5 about the existence of the notes come up?</p> <p>6 A No. That was not – a discussion with</p> <p>7 Jason Post – Post – talking with Jason was more</p> <p>8 around the NAV error, the events surrounding the</p> <p>9 NAV error, facts and circumstances around the NAV</p> <p>10 error.</p> <p>11 Q Okay. And were your discussions with</p> <p>12 Mr. Sauter limited to the investigation that he</p> <p>13 undertook earlier this year that's reflected in</p> <p>14 his declaration?</p> <p>15 A I would say it's not limited to that.</p> <p>16 Q What other topics did you discuss with</p> <p>17 Mr. Sauter beyond the investigation that he</p> <p>18 undertook that's reflected in his declaration?</p> <p>19 MR. RUKAVINA: And I would just</p> <p>20 caution you, Dustin, that to the extent</p> <p>21 that you and Mr. Sauter discussed factual</p> <p>22 matters, that's fair game.</p> <p>23 But as far as if you discussed</p> <p>24 litigation strategy, that's not fair game.</p> <p>25 So be careful with your answer, please,</p>	<p style="text-align: right;">Page 17</p> <p>1 Dustin Norris</p> <p>2 and tell Mr. Morris what you can and can't</p> <p>3 answer.</p> <p>4 THE WITNESS: Yeah.</p> <p>5 So early on with Mr. Sauter,</p> <p>6 discussions were around if I had any</p> <p>7 knowledge of the note, if he had any</p> <p>8 knowledge of the note, trying to discover</p> <p>9 what the notes were, what they were</p> <p>10 related to, and neither of us had</p> <p>11 knowledge related to notes.</p> <p>12 And then discussions around more</p> <p>13 generally – I'm trying to think back.</p> <p>14 There were many discussions with</p> <p>15 Mr. Sauter on the topic.</p> <p>16 General facts and circumstances of</p> <p>17 what he was learning from his</p> <p>18 investigation in which – all of which I</p> <p>19 would refer you to his declaration.</p> <p>20 And then subsequent, talking with</p> <p>21 him regarding the – I'm trying to</p> <p>22 recollect the – the key components.</p> <p>23 But it was general overview of –</p> <p>24 of the notes and NAV error and the</p> <p>25 process. He wasn't here during much of</p>

<p style="text-align: right;">Page 18</p> <p>1 Dustin Norris</p> <p>2 that time period or involved, and so we</p> <p>3 were talking together based on what he was</p> <p>4 doing.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Who are you employed by today?</p> <p>7 A NexPoint Advisors.</p> <p>8 Q Do you hold any position or title with</p> <p>9 HCMFA?</p> <p>10 A I do.</p> <p>11 Q And what's your position or title with</p> <p>12 HCMFA?</p> <p>13 A Executive vice president is my officer</p> <p>14 role.</p> <p>15 Q And when did you become an officer of</p> <p>16 HCMFA?</p> <p>17 A So I – I was originally secretary – and</p> <p>18 I can't remember if I was assistant secretary, but</p> <p>19 I've been involved with HCMFA since 2012. I don't</p> <p>20 know if I was added as an assistant secretary at</p> <p>21 that time; but for many – for several years, I've</p> <p>22 been an officer of HCMFA.</p> <p>23 Q And you were an officer in 2018 and 2019;</p> <p>24 is that right?</p> <p>25 A Correct. I was secretary in 2018, and –</p>	<p style="text-align: right;">Page 19</p> <p>1 Dustin Norris</p> <p>2 I'm looking at the incumbency certificates here –</p> <p>3 and in 2019 in April became executive vice</p> <p>4 president. So from January to – January 2018 to</p> <p>5 April 2019, I was secretary and then became</p> <p>6 executive vice president.</p> <p>7 Q When did you first learn of the existence</p> <p>8 of the notes?</p> <p>9 A So it was after they were demanded, and it</p> <p>10 was – so I believe the demand came in in early</p> <p>11 2020 – 2021. So January-ish 2021.</p> <p>12 Q Do you have any role or any title with any</p> <p>13 of the funds that are managed by either NexPoint</p> <p>14 or HCMFA?</p> <p>15 A I do.</p> <p>16 Q Can you describe those roles or titles for</p> <p>17 me, please?</p> <p>18 A Yeah. I'm – I'm the executive vice</p> <p>19 president of the funds, and my role more broadly</p> <p>20 is I am the head of distribution and chief product</p> <p>21 strategist. And so in that role, I lead the sales</p> <p>22 and business development and marketing for the</p> <p>23 funds, more broadly.</p> <p>24 Q And what is your title with NexPoint</p> <p>25 Advisors, LP?</p>
<p style="text-align: right;">Page 20</p> <p>1 Dustin Norris</p> <p>2 A I am executive vice president in the</p> <p>3 officer capacity, and my role is – as an employee</p> <p>4 is head of distribution and chief product</p> <p>5 strategist.</p> <p>6 Q Okay. So just to summarize, you're the</p> <p>7 executive vice president of NexPoint Advisors, LP;</p> <p>8 correct?</p> <p>9 A Correct.</p> <p>10 Q And that's an officer position; correct?</p> <p>11 A It is.</p> <p>12 Q And when did you attain that title?</p> <p>13 A Probably – I don't have the incumbency</p> <p>14 certificates, but it was probably the same time as</p> <p>15 HCMFA.</p> <p>16 Q Is it fair to say that it was sometime</p> <p>17 before January 1st, 2018?</p> <p>18 A No.</p> <p>19 Q Can you give me an estimate of when that</p> <p>20 was? Feel free –</p> <p>21 A Yeah. The time – the timeline for HCMFA</p> <p>22 was April 2019. I was secretary before that, and</p> <p>23 I don't recall if NexPoint Advisors changed at the</p> <p>24 same time.</p> <p>25 Q Okay. Can I refer to HCMFA and NexPoint</p>	<p style="text-align: right;">Page 21</p> <p>1 Dustin Norris</p> <p>2 Advisors, LP, together as "the advisers"?</p> <p>3 A That's fine.</p> <p>4 Q Okay. So is it fair to say that you were</p> <p>5 the executive vice president, which was an officer</p> <p>6 position, for each of the advisers as of April</p> <p>7 2019?</p> <p>8 A Yes.</p> <p>9 Q Okay. And –</p> <p>10 A I believe that's correct.</p> <p>11 Q And you also serve as the executive vice</p> <p>12 president of the funds that each of the advisers</p> <p>13 manages. Do I have that right?</p> <p>14 A Yes. Currently.</p> <p>15 Q And have you held the –</p> <p>16 A Yes, currently.</p> <p>17 Q And when did you become the executive vice</p> <p>18 president of the funds?</p> <p>19 A I don't remember the exact date, if that</p> <p>20 was around the same time, but I was the secretary</p> <p>21 before that and assistant secretary before that,</p> <p>22 dating back to 2012.</p> <p>23 Q So you've been – is it fair to say that</p> <p>24 you've been an officer of the funds managed by the</p> <p>25 advisers since at least 2013?</p>



<p style="text-align: right;">Page 22</p> <p>1 Dustin Norris</p> <p>2 A I believe so. I'd have to go back and</p> <p>3 look for sure, but I believe. There may have been</p> <p>4 periods of time where I was not, but yes.</p> <p>5 Q Okay. Were any of those periods of time</p> <p>6 when you were not, at any point since 2018 to the</p> <p>7 present?</p> <p>8 A I don't believe so.</p> <p>9 Q Okay. So to the best of your</p> <p>10 recollection, you've served as an executive vice</p> <p>11 president of each of the funds managed by the</p> <p>12 advisers since at least the beginning of 2018; is</p> <p>13 that fair?</p> <p>14 A No. That's – that's different than my</p> <p>15 prior testimony that – I was secretary until</p> <p>16 April –</p> <p>17 Q I apologize. Let me restate the question.</p> <p>18 You've been an officer of – of the</p> <p>19 funds managed by the advisers on a continuous</p> <p>20 basis since at least the beginning of 2018; fair?</p> <p>21 A I believe that's correct, yes.</p> <p>22 Q Thank you for the question – for – for</p> <p>23 the correction.</p> <p>24 So as I think you pointed out earlier,</p> <p>25 one of the topics on the 30(b)(6) notice is the</p>	<p style="text-align: right;">Page 23</p> <p>1 Dustin Norris</p> <p>2 identity of officers, directors, and employees of</p> <p>3 HCMFA?</p> <p>4 A Uh-huh.</p> <p>5 Q Do you want to take a look at that topic</p> <p>6 on the document that you have in front of you?</p> <p>7 A Yes.</p> <p>8 Q Okay.</p> <p>9 A That is – which topic?</p> <p>10 Q 13.</p> <p>11 A 13, yes.</p> <p>12 Q Okay. So let's focus on 13 for a moment.</p> <p>13 Can you – can you identify for me</p> <p>14 HCMFA's officers from January 1st, 2018, to the</p> <p>15 present –</p> <p>16 A Yes.</p> <p>17 Q – including names and titles?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 A So from January 1st, 2018 – and I don't</p> <p>21 have – I – I'm assuming that the dates that I</p> <p>22 have on the incumbency certificates are complete,</p> <p>23 but I'm not certain, and – if there was one in</p> <p>24 between, but I'm assuming this is – that the</p> <p>25 dates I have changing is – is effective when they</p>
<p style="text-align: right;">Page 24</p> <p>1 Dustin Norris</p> <p>2 changed.</p> <p>3 But Brad Ross was president of HCMFA</p> <p>4 from January 1st, 2018, until, I believe,</p> <p>5 February 2018 – sorry – yeah, until</p> <p>6 February 2018.</p> <p>7 In that same time period, Brad Ross,</p> <p>8 president; Trey Parker, executive vice president;</p> <p>9 Frank Waterhouse, treasurer; Dustin Norris,</p> <p>10 secretary.</p> <p>11 And effective 26th of February –</p> <p>12 Q I apologize. What is Mr. Parker's title?</p> <p>13 A Executive vice president.</p> <p>14 Q Thank you.</p> <p>15 A And beginning February 26th, 2018, Trey</p> <p>16 Parker, executive vice president; Frank</p> <p>17 Waterhouse, treasurer; and Dustin Norris,</p> <p>18 secretary; and no longer president, Brad Ross.</p> <p>19 There's no president on the lineup.</p> <p>20 So continuing on, April 11th, 2019,</p> <p>21 Dustin Norris, executive vice president; Frank</p> <p>22 Waterhouse, treasurer; Lauren Thedford, secretary.</p> <p>23 Q And Trey Parker was no longer an officer</p> <p>24 as of that time?</p> <p>25 A He was no longer an officer.</p>	<p style="text-align: right;">Page 25</p> <p>1 Dustin Norris</p> <p>2 Q Okay.</p> <p>3 A And February 18th, 2021, Dustin Norris,</p> <p>4 executive vice president; Frank Waterhouse,</p> <p>5 treasurer; Brian Mitts, assistant treasurer; David</p> <p>6 Willmore, secretary. So Lauren Thedford, no</p> <p>7 longer secretary.</p> <p>8 Q And have there been any changes since</p> <p>9 February 2021?</p> <p>10 A Yes. You have April 8, 2021, Dustin</p> <p>11 Norris, executive president; Frank Waterhouse,</p> <p>12 treasurer; Will Mabry, assistant treasurer; and</p> <p>13 Stephanie Vitiello, secretary.</p> <p>14 Again, I – I don't have – this is</p> <p>15 based on what was provided to me with effective</p> <p>16 dates. I don't know if there was any that were</p> <p>17 missing, if that's complete, but I – I believe</p> <p>18 those are accurate.</p> <p>19 Q Is it fair to say that you're relying on</p> <p>20 exclusively on the incumbency certificates to</p> <p>21 identify the officers of HCMFA since January 1st,</p> <p>22 2018?</p> <p>23 A For this purpose, yes.</p> <p>24 Q Do you have any other information that you</p> <p>25 can share with me regarding the identity of any</p>



<p style="text-align: right;">Page 26</p> <p>1 Dustin Norris</p> <p>2 officers of HCMFA since January 1st, 2018?</p> <p>3 A I don't, no.</p> <p>4 Q Okay. Can you identify for me HCMFA's</p> <p>5 direct and indirect owners since January 1st,</p> <p>6 2018?</p> <p>7 A I can, yes. Generally Jim Dondero and</p> <p>8 Mark Okada are the indirect owners through trusts.</p> <p>9 They own approximately two-thirds, Jim Dondero, a</p> <p>10 little less than a third, Mark Okada, with a</p> <p>11 general partner that is – that owns 1 percent.</p> <p>12 Q And who is the general partner?</p> <p>13 A It's a Strand entity that I believe is</p> <p>14 owned 100 percent by Mr. Dondero.</p> <p>15 Q So Mr. Dondero controls the general</p> <p>16 partner –</p> <p>17 A Right.</p> <p>18 Q – of HCMFA?</p> <p>19 A Correct, and owns approximately two-thirds</p> <p>20 of the equity.</p> <p>21 Q And is that a controlling interest to the</p> <p>22 best of your knowledge?</p> <p>23 A Yes, I believe so.</p> <p>24 Q Okay. Does HCMFA have any directors?</p> <p>25 A It does not. It has a sole director</p>	<p style="text-align: right;">Page 27</p> <p>1 Dustin Norris</p> <p>2 through the general partners. So HCMFA does</p> <p>3 not – Strand – whatever the Strand entity does,</p> <p>4 Jim Dondero is the sole director.</p> <p>5 Q Okay. And what about employees? Does</p> <p>6 HCMFA have any employees?</p> <p>7 A It does have some front-office employees,</p> <p>8 trading professionals.</p> <p>9 Q Are there any employees who perform any</p> <p>10 services other than trading services?</p> <p>11 A Trading in front-office investment</p> <p>12 analysts, portfolio managers, generally that's</p> <p>13 been the structure with HCMFA, is they held –</p> <p>14 they had employees that performed front-office</p> <p>15 functions, and we, as I believe you're aware,</p> <p>16 outsourced the back-office accounting, compliance,</p> <p>17 and legal services to Highland Capital Management,</p> <p>18 LP, during this time period.</p> <p>19 Q Let's go to Topic Number 12.</p> <p>20 A Okay.</p> <p>21 Q And Topic Number 12 asks for a witness who</p> <p>22 can testify as to all communications that HCMFA</p> <p>23 "made in the bankruptcy case concerning the notes,</p> <p>24 including any pleadings, court filing, or</p> <p>25 argument."</p>
<p style="text-align: right;">Page 28</p> <p>1 Dustin Norris</p> <p>2 Do you see that?</p> <p>3 A I do.</p> <p>4 Q Are you prepared to answer questions on</p> <p>5 that topic?</p> <p>6 A I am.</p> <p>7 Q All right. You're aware that obviously</p> <p>8 Highland has commenced an adversary proceeding</p> <p>9 against HCMFA to collect on two promissory notes;</p> <p>10 right?</p> <p>11 A I am, yes, and I believe this right here</p> <p>12 is the complaint filed January 22nd.</p> <p>13 Q Okay. And you're aware that the notes</p> <p>14 that are the subject of the lawsuit were dated</p> <p>15 May 2nd and May 3rd, 2019, respectively; right?</p> <p>16 A Sorry. Can you repeat that?</p> <p>17 Q You're aware that the notes that are the</p> <p>18 subject of the lawsuit are dated May 2nd and</p> <p>19 May 3rd, 2019, respectively; correct?</p> <p>20 A Yes. The notes that are attached to the</p> <p>21 complaint, May 2nd and May 3rd.</p> <p>22 Q Okay. And can we refer to those two</p> <p>23 notes – those two promissory notes for the rest</p> <p>24 of this deposition collectively as "the notes"?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 29</p> <p>1 Dustin Norris</p> <p>2 Q Okay. And you're aware that after</p> <p>3 Highland commenced this action, HCMFA filed its</p> <p>4 original answer; correct?</p> <p>5 A That's correct.</p> <p>6 Q Okay. And Topic Number 1 on your list, in</p> <p>7 fact, is the answer, correct, the original answer?</p> <p>8 A That's correct. It's Topic Number 1.</p> <p>9 MR. MORRIS: Okay. Can we put</p> <p>10 Deposition Exhibit 5 up on the screen?</p> <p>11 We're going to look at the original</p> <p>12 answer.</p> <p>13 (Exhibit 5 tendered.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q And, again, feel free to let me know if</p> <p>16 there's any portion of this document that you need</p> <p>17 to see. But looking at the first page – and</p> <p>18 perhaps we can continue to scroll through it – is</p> <p>19 this the original answer that was filed on behalf</p> <p>20 of HCMFA on March 1st, 2021?</p> <p>21 A I'll take your representation that it is.</p> <p>22 It looks to be, yeah.</p> <p>23 Q Okay.</p> <p>24 A I was not involved in the filing of it,</p> <p>25 but...</p>

<p style="text-align: right;">Page 30</p> <p>1 Dustin Norris</p> <p>2 Q Okay. Is the copy that you have with you</p> <p>3 dated March 1st, 2021?</p> <p>4 A Yes, it is.</p> <p>5 Q And if you can turn to Page 6 of 7, does</p> <p>6 it appear to be the exact same as what appears on</p> <p>7 the screen, showing the March 1st, 2021, date?</p> <p>8 A It does.</p> <p>9 Q And do you refer to the March 1st, 2021,</p> <p>10 date, as "the answer date"?</p> <p>11 A Yes.</p> <p>12 Q Okay. HCMFA did not assert any</p> <p>13 affirmative defenses in this pleading; correct?</p> <p>14 A That's my understanding.</p> <p>15 Q Okay. And HCMFA had full access to you as</p> <p>16 of March 1st, 2021; correct?</p> <p>17 A Yes.</p> <p>18 Q And HCMFA had full access to Mr. Dondero</p> <p>19 as of March 1st, 2021; correct?</p> <p>20 A In the term "full access," they could have</p> <p>21 talked to him, yes.</p> <p>22 Q Right. And there was no restriction from</p> <p>23 the bankruptcy court or otherwise on HCMFA's</p> <p>24 ability to communicate with Mr. Dondero that you</p> <p>25 know of; correct?</p>	<p style="text-align: right;">Page 31</p> <p>1 Dustin Norris</p> <p>2 A None that I know of.</p> <p>3 Q And there was no restriction or limitation</p> <p>4 on HCMFA's ability to speak with you at or prior</p> <p>5 to March 1st, 2021; correct?</p> <p>6 A That's correct.</p> <p>7 Q How about Ms. Thedford? Are you aware of</p> <p>8 any restriction or limitation on HCMFA's ability</p> <p>9 to speak with her prior to March 1st, 2021?</p> <p>10 A Yes.</p> <p>11 Q Okay. And what restriction was that?</p> <p>12 A Yeah. So she was part of the Highland</p> <p>13 legal team. She was an employee of HCMLP. And</p> <p>14 during this time period, we had outsourced our</p> <p>15 legal and compliance functions to them. And if –</p> <p>16 I would refer you to Mr. Sauter's declaration and</p> <p>17 the attachments and schedules. There's a very</p> <p>18 strict direction from Mr. Seery that</p> <p>19 individuals – particularly on the legal team –</p> <p>20 could not work on anything that would be inimical</p> <p>21 to the debtor.</p> <p>22 Q Okay.</p> <p>23 A And so Ms. Thedford, on multiple</p> <p>24 occasions, told us she was unable to work on</p> <p>25 things, and that began back in fall of 2000 –</p>
<p style="text-align: right;">Page 32</p> <p>1 Dustin Norris</p> <p>2 fall of 2020 – late summer 2020, actually. And</p> <p>3 so she was not accessible for things like this.</p> <p>4 Q How about Mr. Post? Do you know who</p> <p>5 Mr. Post was employed by in 2018 and 2019?</p> <p>6 A 2018 and '19, he was employed by Highland</p> <p>7 Capital Management, LP.</p> <p>8 Q Do you know whether, in your conversations</p> <p>9 with him, does he have any personal knowledge</p> <p>10 regarding the NAV error?</p> <p>11 A Yes.</p> <p>12 Q Was he involved in any of the issues</p> <p>13 surrounding the NAV error?</p> <p>14 A He was knowledgeable – as he was</p> <p>15 chief – chief compliance officer of the retail</p> <p>16 advisers at that time, and interacted with the</p> <p>17 HCMLP employees and the board regarding the NAV</p> <p>18 error, he also – in your schedules, you'll notice</p> <p>19 in one of the memos, he participated in calls with</p> <p>20 the SEC, and so he was – he was involved in the</p> <p>21 process of the NAV error and understood and worked</p> <p>22 with the other HCMLP employees, which naturally</p> <p>23 they would. We had outsourced valuation services</p> <p>24 to HCMLP. We had outsourced legal and compliance</p> <p>25 to HCMLP, and as such, that was all part of what</p>	<p style="text-align: right;">Page 33</p> <p>1 Dustin Norris</p> <p>2 they were working on.</p> <p>3 Q Did – did – were there any restrictions</p> <p>4 or limitations on HCMFA's ability to speak with</p> <p>5 Mr. Post prior to March 1st, 2021?</p> <p>6 A So once – so Jason – one important</p> <p>7 component here is Jason Post did leave the debtor,</p> <p>8 and working with Mr. Seery, I believe, to then</p> <p>9 leave and become an employee of NexPoint Advisors,</p> <p>10 and that was at the request of our retail board,</p> <p>11 as there were restrictions on Mr. Post at that</p> <p>12 time.</p> <p>13 And as chief compliance officer of the</p> <p>14 funds, the board had become very uncomfortable</p> <p>15 that they had restrictions on Mr. Post. And so it</p> <p>16 was in everybody's interest to allow him to become</p> <p>17 an employee of NexPoint Advisors, and so that was</p> <p>18 late 2020, I believe. I don't know the exact</p> <p>19 date. And at that time, there were certain things</p> <p>20 that Jason was able to then help the adviser with,</p> <p>21 but there were still restrictions. And he had</p> <p>22 limited access to his prior data. He left the</p> <p>23 debtor, but he didn't have – I believe he had</p> <p>24 restrictions on what he could access in the</p> <p>25 information.</p>

<p style="text-align: right;">Page 34</p> <p>1 Dustin Norris</p> <p>2 Q Okay. But it is fair to say that between</p> <p>3 January 21st, 2021, the day that the complaint was</p> <p>4 filed, and March 1st, 2021, the date that HCMFA</p> <p>5 filed its original answer, HCMFA had complete and</p> <p>6 unfettered access to you, to Mr. Dondero, and</p> <p>7 Mr. Post; correct?</p> <p>8 A Again, the complete and unfettered access</p> <p>9 on the Jason Post aspect, they could have talked</p> <p>10 to him. I'm not sure if there were any other</p> <p>11 restrictions related to what he had or information</p> <p>12 he had or based on his prior role of the debtor,</p> <p>13 he was restricted on what he could or couldn't</p> <p>14 talk about, if he had any lease agreement. I'm</p> <p>15 not certain on that. But, yes, we could talk</p> <p>16 to – or HCMFA could talk to Mr. Post.</p> <p>17 Q Okay. And the topics that you just raised</p> <p>18 are speculation on your part; correct?</p> <p>19 A It is.</p> <p>20 Q You're not aware of any restriction of –</p> <p>21 you don't have any knowledge of any restriction or</p> <p>22 limitation placed on HCMFA in respect of its</p> <p>23 ability to communicate with Mr. Post between</p> <p>24 January 21st, 2021, and March 1st, 2021; correct?</p> <p>25 A Based on my personal knowledge, no. There</p>	<p style="text-align: right;">Page 35</p> <p>1 Dustin Norris</p> <p>2 could have been something, but –</p> <p>3 Q Okay. I'm just asking about your</p> <p>4 knowledge, not what could have been.</p> <p>5 All right. So we're going to use</p> <p>6 March 1st, 2021, as the answer date.</p> <p>7 Are you aware of any document that</p> <p>8 HCMFA filed with the bankruptcy court prior to the</p> <p>9 answer date that concerns or relates in any way to</p> <p>10 the notes?</p> <p>11 A I'm thinking if I'm aware.</p> <p>12 Not that I'm aware of.</p> <p>13 Q Are you aware – withdrawn.</p> <p>14 Do you know what a "pleading" is, if I</p> <p>15 use that phrase?</p> <p>16 A I believe so. These are the answers that</p> <p>17 we gave. The first answer, the amended answer,</p> <p>18 and the second amended answer, that – I believe</p> <p>19 those are the two pleadings. Is that correct?</p> <p>20 Q You know what? I think my first question</p> <p>21 was broad enough, because I just used the word</p> <p>22 "document," so I'm going to let that sit.</p> <p>23 Are you aware of any argument that</p> <p>24 anybody ever made on behalf of HCMFA prior to the</p> <p>25 answer date that concerned or related to any of</p>
<p style="text-align: right;">Page 36</p> <p>1 Dustin Norris</p> <p>2 the notes?</p> <p>3 A And you mean an argument to the Court?</p> <p>4 Q Yes.</p> <p>5 A Not that I'm aware of.</p> <p>6 Q Okay. Are you aware of any statement of</p> <p>7 any kind that was made to the bankruptcy court</p> <p>8 prior to the answer date that concerned or related</p> <p>9 in any way to the notes?</p> <p>10 A Not that I can remember. But there's</p> <p>11 obviously been a lot of documents with the Court,</p> <p>12 but not that I'm aware of.</p> <p>13 Q Right. But you – did you do anything to</p> <p>14 prepare yourself to answer questions on Topic 12?</p> <p>15 A Yes.</p> <p>16 Q And do you believe that you're able to</p> <p>17 competently answer my questions relating to</p> <p>18 Topic 12 as HCMFA's 30(b)(6) witness?</p> <p>19 A I am. But I guess in this regard you're</p> <p>20 asking to my knowledge. And so, I guess, that –</p> <p>21 are you asking my personal knowledge or as my</p> <p>22 knowledge as a representative of the company?</p> <p>23 Q All right. I appreciate that.</p> <p>24 I am only examining you today in your</p> <p>25 capacity as a 30(b)(6) witness.</p>	<p style="text-align: right;">Page 37</p> <p>1 Dustin Norris</p> <p>2 A Okay. That makes sense. Okay.</p> <p>3 Q And so if I use the phrase "you," just as</p> <p>4 we did in the deposition notice, I'm really</p> <p>5 referring to HCMFA; is that fair?</p> <p>6 A That's fair.</p> <p>7 Q Okay. So let me just ask the questions</p> <p>8 again with that clarification.</p> <p>9 Are you aware, in your capacity as the</p> <p>10 30(b)(6) witness today, of any document that was</p> <p>11 ever filed on behalf of HCMFA prior to the answer</p> <p>12 date that concerns or relates to the notes?</p> <p>13 A No.</p> <p>14 Q Are you aware, in your capacity as the</p> <p>15 HCMFA 30(b)(6) witness, of any argument that was</p> <p>16 ever made to the Court prior to the answer date</p> <p>17 that concerns or relates in any way to the notes?</p> <p>18 A No.</p> <p>19 Q Are you aware of – again, when I use the</p> <p>20 phrase "you," I'm referring to HCMFA, just to</p> <p>21 shorten these questions a little bit.</p> <p>22 Are you aware of any statement that</p> <p>23 was ever made on your behalf to the bankruptcy</p> <p>24 court prior to the answer date that concerns or</p> <p>25 relates in any way to the notes?</p>

<p style="text-align: right;">Page 38</p> <p>1 Dustin Norris</p> <p>2 A Not that I recall.</p> <p>3 Q Okay. When did HCMFA first learn of the</p> <p>4 existence of the notes?</p> <p>5 A So HCMFA's position is that they learned</p> <p>6 of them when they were demanded, or after they</p> <p>7 were demanded. I don't even know that when we</p> <p>8 received – or who they were sent to, but it was</p> <p>9 after they were demanded.</p> <p>10 Q Okay. And do you recall when they were</p> <p>11 demanded?</p> <p>12 A I don't have the exact date. If you could</p> <p>13 remind me or show a document, that might be</p> <p>14 helpful. I don't know if you have the demand, or</p> <p>15 if that's one of the documents, but I don't</p> <p>16 remember the specific date.</p> <p>17 MR. MORRIS: Can we put Exhibit 1</p> <p>18 up on the screen?</p> <p>19 It's actually the complaint – the</p> <p>20 original complaint, sir.</p> <p>21 (Exhibit 1 tendered.)</p> <p>22 BY MR. MORRIS:</p> <p>23 Q If you go to Exhibit 3, do you see there's</p> <p>24 a demand letter there?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 39</p> <p>1 Dustin Norris</p> <p>2 Q And you've seen that before; right?</p> <p>3 A I have.</p> <p>4 Q Okay. And are you – do you see that it</p> <p>5 was sent to Mr. Waterhouse?</p> <p>6 A Yes.</p> <p>7 Q And Mr. Waterhouse was the treasurer of</p> <p>8 HCMFA on December 3rd, 2020; correct?</p> <p>9 A Correct.</p> <p>10 Q Okay. So is it fair to say that HCMFA</p> <p>11 knew of the existence of the notes on</p> <p>12 December 3rd, 2020?</p> <p>13 A It's safe to say that Frank Waterhouse</p> <p>14 received this. I'm not sure the date exactly</p> <p>15 when – when the company became aware. Frank,</p> <p>16 yes, is an officer. He's also – the irony here,</p> <p>17 he's CFO of the debtor who is demanding this, so</p> <p>18 he's demanding it from himself. I know it's</p> <p>19 coming from – from who is sending it, but at this</p> <p>20 time, I don't know when Mr. Dondero or other</p> <p>21 officers became aware of it. Sometime after</p> <p>22 December 3rd.</p> <p>23 Q Okay. Do you know if HCMFA ever responded</p> <p>24 to this demand letter prior to the time the</p> <p>25 complaint was filed on January 21st, 2021?</p>
<p style="text-align: right;">Page 40</p> <p>1 Dustin Norris</p> <p>2 A I don't believe they did.</p> <p>3 Q So it's fair to say that nobody on behalf</p> <p>4 of HCMFA ever told any representative of Highland</p> <p>5 that it was previously unaware of the existence of</p> <p>6 the notes?</p> <p>7 A Sorry. Can you repeat that one more time?</p> <p>8 Q HCMFA never responded to this letter prior</p> <p>9 to the commencement of the lawsuit; right?</p> <p>10 A Not to my knowledge, didn't respond to</p> <p>11 HCMLP on this.</p> <p>12 Q Is there a reason why they didn't reach</p> <p>13 out to Highland to let Highland know that it</p> <p>14 disputed the existence of these notes?</p> <p>15 A I don't know if there's a reason, but I do</p> <p>16 know, during this time period, you'll recall,</p> <p>17 December and January, leading up to the actual</p> <p>18 demand – or the initial complaint, there was a</p> <p>19 lot going on. We were almost in daily depositions</p> <p>20 and court hearings. There was a hearing</p> <p>21 injunction handed out against Jim. There was a</p> <p>22 restraining order. There – TRO. There were</p> <p>23 lawsuits against the advisers. And so there was a</p> <p>24 lot going on, and I think this was put back in the</p> <p>25 priority line.</p>	<p style="text-align: right;">Page 41</p> <p>1 Dustin Norris</p> <p>2 Again, all of the compliance and legal</p> <p>3 functions at this time, December 2020, were being</p> <p>4 outsourced to HCMLP, and we were told they were</p> <p>5 unable to help with anything that was inimical to</p> <p>6 the debtor. And so there were no employees of</p> <p>7 HCMFA that were legal compliance professionals,</p> <p>8 and so this – this was – I guess – this is my</p> <p>9 speculation – was put in the back of the line, or</p> <p>10 further back from the actual litigation that they</p> <p>11 were defending or working against the daily</p> <p>12 depositions and coordinating.</p> <p>13 Q Do you have any reason to believe, as you</p> <p>14 sit here right now, that Mr. Waterhouse did not</p> <p>15 receive this demand letter on or about</p> <p>16 December 3rd, 2020?</p> <p>17 A I don't know. I don't have any reason to</p> <p>18 believe that, but I don't know.</p> <p>19 Q Okay.</p> <p>20 A And I don't recall what he testified to in</p> <p>21 regard to receiving the demand, but we see here it</p> <p>22 was sent to him. We can assume it got sent to</p> <p>23 him.</p> <p>24 Q Okay. Let me ask the question again, and</p> <p>25 I would appreciate you listening carefully to my</p>

<p style="text-align: right;">Page 42</p> <p>1 Dustin Norris</p> <p>2 question.</p> <p>3 As HCMFA's 30(b)(6) witness today,</p> <p>4 does HCMFA contend that this letter was not</p> <p>5 received by Mr. Waterhouse on or about</p> <p>6 December 3rd, 2020?</p> <p>7 MR. RUKAVINA: Well, that's not our</p> <p>8 contention. We agree that it was received</p> <p>9 on or about that date.</p> <p>10 MR. MORRIS: Okay.</p> <p>11 THE WITNESS: Yeah. That's –</p> <p>12 yeah.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q Okay. HCMFA actually knew about the notes</p> <p>15 just weeks after they were signed; correct?</p> <p>16 MR. RUKAVINA: Objection; form.</p> <p>17 THE WITNESS: So the debtor</p> <p>18 employees who created the notes knew about</p> <p>19 them, but it was not knowledge of HCMFA.</p> <p>20 Those were all Highland Capital</p> <p>21 Management, LP, employees.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q So it's your testimony that HCMFA had no</p> <p>24 knowledge of the existence of the notes in</p> <p>25 June 2019; is that correct?</p>	<p style="text-align: right;">Page 43</p> <p>1 Dustin Norris</p> <p>2 A June 2019.</p> <p>3 Correct.</p> <p>4 Q As the executive vice president of HCMFA,</p> <p>5 have you ever reviewed HCMFA's audited financial</p> <p>6 statements?</p> <p>7 A I have not.</p> <p>8 Q Is there anybody on behalf of HCMFA who is</p> <p>9 charged with the responsibility of reading HCMFA's</p> <p>10 audited financial statements?</p> <p>11 A Yeah. We – again, the key here is we</p> <p>12 outsourced finance, accounting, back-office</p> <p>13 functions. It includes financial statement</p> <p>14 preparation. The treasurer of HCMFA is an HCMLP</p> <p>15 employee, Frank Waterhouse, at that time, and at</p> <p>16 all times that we're talking about. And so with</p> <p>17 we – and Frank is a professional, and his team</p> <p>18 are professionals, right? We outsource to an</p> <p>19 accounting group to prepare and oversee, work with</p> <p>20 the auditors in preparation of those financials.</p> <p>21 And so they were tasked with that. And we relied</p> <p>22 on them. And there was not a specialist during</p> <p>23 this time period that did that.</p> <p>24 Q Does Frank Waterhouse have any</p> <p>25 responsibility, as the treasurer of HCMFA, to make</p>
<p style="text-align: right;">Page 44</p> <p>1 Dustin Norris</p> <p>2 sure that HCMFA's audited financial statements are</p> <p>3 true, accurate, and reliable?</p> <p>4 A Him and his team, yeah. We actually –</p> <p>5 that's what we rely on them for.</p> <p>6 Q And did you rely on him not only in his</p> <p>7 capacity as an employee of Highland, but in his</p> <p>8 capacity as the treasurer of HCMFA?</p> <p>9 A Yeah, he was – let's take the first –</p> <p>10 as a – in his capacity under the shared services</p> <p>11 agreement, okay, doing accounting, books and</p> <p>12 records, audited – audit support, yes, we relied</p> <p>13 on him in that capacity. And he also, as an HCMLP</p> <p>14 employee, served as a treasurer of HCMFA. In that</p> <p>15 role, we would expect him to oversee the</p> <p>16 financials.</p> <p>17 MR. MORRIS: Okay. And move to</p> <p>18 strike.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q And I'm going to ask you very</p> <p>21 specifically: As HCMFA's representative today,</p> <p>22 did Frank Waterhouse have a duty as the treasurer</p> <p>23 of HCMFA to make sure that HCMFA's audited</p> <p>24 financial statements were true and accurate?</p> <p>25 A That – very specific from the treasurer</p>	<p style="text-align: right;">Page 45</p> <p>1 Dustin Norris</p> <p>2 role, I would say the treasurer role was to</p> <p>3 oversee the financial aspects of the advisers.</p> <p>4 Q And was one of those aspects HCMFA's</p> <p>5 audited financial statements?</p> <p>6 A As – yeah. And he was – again, I'll</p> <p>7 reiterate, he was the CFO of Highland who was</p> <p>8 tasked with creating the financial statements for</p> <p>9 the advisers.</p> <p>10 MR. MORRIS: Okay. I'm again going</p> <p>11 to move to strike.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q I'm not asking about his role as CFO of</p> <p>14 Highland. I'm limiting it strictly to his role as</p> <p>15 the treasurer of HCMFA.</p> <p>16 A And I don't have –</p> <p>17 Q Did Frank – let me ask my question.</p> <p>18 Is any officer of HCMFA responsible</p> <p>19 for making sure that HCMFA's audited financial</p> <p>20 statements are true and accurate?</p> <p>21 A I don't know, but I would assume – and I</p> <p>22 don't want to make assumptions here as the</p> <p>23 representative – but I would assume that the</p> <p>24 treasurer would have that role.</p> <p>25 Q Okay. And what is your assumption based</p>



<p style="text-align: right;">Page 46</p> <p>1 Dustin Norris</p> <p>2 on?</p> <p>3 A Based on the understanding of what a</p> <p>4 treasurer role would be. But I – I don't have</p> <p>5 any – I don't have any knowledge, I'm not</p> <p>6 representing that we have any roles and</p> <p>7 responsibilities or defined procedures that the</p> <p>8 treasurer does this, that, or the other.</p> <p>9 Q Okay. Have you – as you sit here right</p> <p>10 now, have you ever seen HCMFA's audited financial</p> <p>11 statements for the period ending December 31st,</p> <p>12 2018?</p> <p>13 A I saw them in the materials that were</p> <p>14 provided in your schedules, I believe.</p> <p>15 Q Okay. Let's –</p> <p>16 A That was the first time.</p> <p>17 Q Let's take a quick look at it.</p> <p>18 MR. MORRIS: If we could put up on</p> <p>19 the screen the document that's been marked</p> <p>20 Exhibit 45.</p> <p>21 (Exhibit 45 tendered.)</p> <p>22 BY MR. MORRIS:</p> <p>23 Q Okay. And do you see that this is the</p> <p>24 first page of HCMFA's audited financial statements</p> <p>25 for the period ending December 31st, 2018?</p>	<p style="text-align: right;">Page 47</p> <p>1 Dustin Norris</p> <p>2 A I do.</p> <p>3 MR. MORRIS: Okay. And if we could</p> <p>4 just scroll, I think, to the third page.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Do you see that it's signed by</p> <p>7 PricewaterhouseCoopers on June 3rd, 2019?</p> <p>8 A I see that the audit opinion is signed by</p> <p>9 them, yes.</p> <p>10 Q Correct. And – and you're aware that</p> <p>11 PricewaterhouseCoopers was the outside auditor</p> <p>12 retained by HCMFA to conduct the audit of HCMFA's</p> <p>13 financial statements; correct?</p> <p>14 A Given that they gave an opinion, yes.</p> <p>15 Q Okay. And you have no reason to believe</p> <p>16 that the document that's up on the screen is</p> <p>17 anything other than HCMFA's audited financial</p> <p>18 statements for the period ending December 31st,</p> <p>19 2018, do you?</p> <p>20 And we're happy – I'm happy to scroll</p> <p>21 through whatever you need to see.</p> <p>22 A Yeah. And there they're distinguishing –</p> <p>23 you have an audit opinion and having audited</p> <p>24 financials, I assume that you have all that is</p> <p>25 here. You showed me the first page of the</p>
<p style="text-align: right;">Page 48</p> <p>1 Dustin Norris</p> <p>2 financials, which –</p> <p>3 Q Yeah. Yeah. Let's –</p> <p>4 A So I'm assuming that's the –</p> <p>5 Q Let's scroll down just a little bit.</p> <p>6 You can see that the next page is</p> <p>7 HCMFA's balance sheet. Do you see that?</p> <p>8 A I do.</p> <p>9 Q Okay.</p> <p>10 MR. MORRIS: Can we go to</p> <p>11 "Subsequent Events"? I think it's</p> <p>12 Page 17.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q Have you seen this page of HCMFA's audited</p> <p>15 financial statements before?</p> <p>16 A Just in preparation for this.</p> <p>17 Q Do you understand that in the "Subsequent</p> <p>18 Events" section, the notes are described in the</p> <p>19 audited financial statements?</p> <p>20 A There is a reference to promissory notes</p> <p>21 in aggregate of \$7.4 million, yes.</p> <p>22 Q And those are the two notes that Highland</p> <p>23 is suing on; correct?</p> <p>24 A I would assume that's the case, because</p> <p>25 the dollar amounts line up. But I don't have the</p>	<p style="text-align: right;">Page 49</p> <p>1 Dustin Norris</p> <p>2 backup, but I would assume that's the case.</p> <p>3 Q And not only do the dollar amounts line</p> <p>4 up, but do you see that the statement in</p> <p>5 "Subsequent Events" specifically identifies the</p> <p>6 notes as having been issued in the year 2019?</p> <p>7 A Yes.</p> <p>8 Q And are you aware of any notes that</p> <p>9 anybody in the world contends were signed by HCMFA</p> <p>10 between January 1st, 2019, and June 3rd, 2019,</p> <p>11 other than the two notes that Highland is suing</p> <p>12 on?</p> <p>13 A No.</p> <p>14 Q Okay. So can you conclude, as HCMFA's</p> <p>15 30(b)(6) witness, that the notes that are</p> <p>16 described in the subsequent events are the very</p> <p>17 notes that are the subject of the pending lawsuit?</p> <p>18 A That appears to be the case.</p> <p>19 Q Okay. And so it's also fair to say, then,</p> <p>20 that HCMFA does not dispute that its own audited</p> <p>21 financial statements that were the subject of a</p> <p>22 June 3rd, 2019, opinion by PricewaterhouseCoopers</p> <p>23 disclosed the existence of the notes at issue;</p> <p>24 correct?</p> <p>25 A No. We don't dispute that that was</p>



<p style="text-align: right;">Page 50</p> <p>1 Dustin Norris</p> <p>2 included in the financial statements. You know,</p> <p>3 I – I think we're going to get into it in our</p> <p>4 affirmative defenses, but we dispute that the</p> <p>5 notes were actually valid notes, and we would say</p> <p>6 that this was an error. These should not have</p> <p>7 been included, but were included in good faith by</p> <p>8 the accounting team who thought that they were</p> <p>9 valid notes.</p> <p>10 Q Okay.</p> <p>11 A So –</p> <p>12 MR. MORRIS: I move to strike</p> <p>13 everything other than the first portion of</p> <p>14 your answer that was responsive to my</p> <p>15 question.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q HCMFA does not dispute that it received</p> <p>18 \$2.4 million from Highland on May 2nd, does it?</p> <p>19 A No.</p> <p>20 Q HCMFA does not dispute that it received</p> <p>21 \$5 million on May 3rd, 2019, does it?</p> <p>22 A No.</p> <p>23 Q Let's just confirm that, if we can.</p> <p>24 MR. MORRIS: Can we put on the</p> <p>25 screen a document that's been marked as</p>	<p style="text-align: right;">Page 51</p> <p>1 Dustin Norris</p> <p>2 Exhibit 147?</p> <p>3 (Exhibit 147 tendered.)</p> <p>4 BY MR. MORRIS:</p> <p>5 Q Okay. Do you see that this is – or at</p> <p>6 least this appears to be a bank account statement?</p> <p>7 A Yes. BBVA Compass is a bank, so I'll take</p> <p>8 your representation it's a statement.</p> <p>9 MR. MORRIS: All right. And if we</p> <p>10 can just scroll down.</p> <p>11 All right. Stop right there.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q Do you see that there's a reference on</p> <p>14 May 2nd to a 2.4-million-dollar transfer?</p> <p>15 A I do.</p> <p>16 Q Okay. And is that consistent with your</p> <p>17 testimony just now that on May 2nd, Highland</p> <p>18 transferred \$2.4 million to HCMFA?</p> <p>19 A That's correct.</p> <p>20 Q And lower on the page, the statement shows</p> <p>21 a transfer of \$5 million on May 3rd; correct?</p> <p>22 A Yes.</p> <p>23 Q And that's the payment that HCMFA</p> <p>24 acknowledged – acknowledges receiving from</p> <p>25 Highland on that day; correct?</p>
<p style="text-align: right;">Page 52</p> <p>1 Dustin Norris</p> <p>2 A Is this HCMFA's bank statement or is this</p> <p>3 HCMLP's?</p> <p>4 Q No. It's HCMLP's.</p> <p>5 A Okay. It just says "Highland Capital</p> <p>6 Management," and I'm assuming it lines up – I'm</p> <p>7 assuming this is the transfer, but –</p> <p>8 Q Okay.</p> <p>9 A – I can't confirm an entity. But we're</p> <p>10 not denying that there was cash received those</p> <p>11 dates from HCMLP.</p> <p>12 Q Okay. And are you aware –</p> <p>13 MR. MORRIS: We can take this down</p> <p>14 now.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q Do you recall that Topic Number 10 asks</p> <p>17 for a witness who can testify about the accounting</p> <p>18 of these transfers?</p> <p>19 A Uh-huh. Yup.</p> <p>20 Q Are you prepared to testify on Topic</p> <p>21 Number 10?</p> <p>22 A Yes.</p> <p>23 Q Can you tell me how HCMFA accounted for</p> <p>24 these payments on its books and records?</p> <p>25 A I can, yeah.</p>	<p style="text-align: right;">Page 53</p> <p>1 Dustin Norris</p> <p>2 So my understanding of the company's</p> <p>3 position is that – and – and it may be helpful</p> <p>4 to provide some additional color leading up to the</p> <p>5 accounting. I don't know if we want to address</p> <p>6 that later in our affirmative defenses, if you</p> <p>7 have a preference there.</p> <p>8 Q I'd just like you to – maybe it's my</p> <p>9 question, but I just want you to focus on my</p> <p>10 question.</p> <p>11 A Uh-huh.</p> <p>12 Q And that is: First, do you know how HCMFA</p> <p>13 accounted for these two payments in its books and</p> <p>14 records?</p> <p>15 A Yeah. So the HCMLP employees who were</p> <p>16 tasked with creating books and records of the</p> <p>17 adviser, the accounting team recorded, we – we –</p> <p>18 our position is that is an incorrect recording of</p> <p>19 a payable to HCMLP. And so there was a payable</p> <p>20 booked on the balance sheet of HCMFA by the HCMLP</p> <p>21 accounting team.</p> <p>22 MR. MORRIS: Okay. I'm going to</p> <p>23 move to strike.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q I – I'd appreciate not having the</p>

<p style="text-align: right;">Page 54</p> <p>1 Dustin Norris</p> <p>2 commentary. Your counsel can ask those questions</p> <p>3 or if it's responsive to a question. I'm just</p> <p>4 asking a very simple question.</p> <p>5 A Yup.</p> <p>6 Q How – how did HCMFA record these payments</p> <p>7 on its books and records?</p> <p>8 A Yeah. My understanding is they recorded a</p> <p>9 payable to HCMFA, a liability.</p> <p>10 Q And do you know when HCMFA first</p> <p>11 discovered that the payments were booked on its</p> <p>12 books and records as a liability?</p> <p>13 A Our position is that that was revealed</p> <p>14 through after the – sorry – after the demand.</p> <p>15 And as we began to get additional information –</p> <p>16 particularly, and I would refer you to</p> <p>17 Mr. Sauter's declaration, our amended response,</p> <p>18 and our second amended response that was filed</p> <p>19 yesterday regarding each of those time periods.</p> <p>20 But it was after the demand we found out how it</p> <p>21 was booked.</p> <p>22 Q Okay. So just to simplify this: HCMFA's</p> <p>23 books and records recorded the transfers on</p> <p>24 May 2nd and May 3rd as liabilities from HCMFA to</p> <p>25 Highland; correct?</p>	<p style="text-align: right;">Page 55</p> <p>1 Dustin Norris</p> <p>2 A So my understanding is the audited</p> <p>3 financials recorded in a subsequent event – you</p> <p>4 showed me that – they recorded a subsequent</p> <p>5 event. The balance sheet as of 12/31/2018 wasn't</p> <p>6 amended because it was a subsequent event. But on</p> <p>7 their books and records at that time, or</p> <p>8 subsequent to that, they recorded a liability.</p> <p>9 Q And – and do you know if that liability</p> <p>10 was recorded contemporaneously in May of 2019?</p> <p>11 A I don't know.</p> <p>12 Q But it's – it's HCMFA's position that,</p> <p>13 notwithstanding the recording of the liability on</p> <p>14 its books and records, that HCMFA didn't learn of</p> <p>15 that fact until after the demand letter was sent</p> <p>16 in December of 2020.</p> <p>17 Do I have that right?</p> <p>18 A Correct.</p> <p>19 Q Okay. Have there been any changes in</p> <p>20 HCMFA's books and records since it learned of the</p> <p>21 promise – of the existence of the promise –</p> <p>22 withdrawn.</p> <p>23 Has – has HCMFA changed its books and</p> <p>24 records after learning that the payments were</p> <p>25 recorded as liabilities?</p>
<p style="text-align: right;">Page 56</p> <p>1 Dustin Norris</p> <p>2 A I'm not aware of how it's been treated</p> <p>3 since then.</p> <p>4 Q Okay.</p> <p>5 MR. RUKAVINA: And, John, no</p> <p>6 urgency, but find some time in the near</p> <p>7 future for the restroom break. The</p> <p>8 morning coffee is working its magic.</p> <p>9 MR. MORRIS: Happy to do it right</p> <p>10 now, Davor.</p> <p>11 THE WITNESS: I can use that, too.</p> <p>12 I'm almost through my water bottle.</p> <p>13 MR. MORRIS: All right. So, look,</p> <p>14 it's 12:05. Let's just come back at 12:15</p> <p>15 or 11:15.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 MR. MORRIS: Thanks so much.</p> <p>18 (Recess from 11:05 a.m. to 11:16 a.m. CST)</p> <p>19 BY MR. MORRIS:</p> <p>20 Q To the best of your knowledge, has HCMFA</p> <p>21 ever changed its books and records in order to</p> <p>22 reverse the booking of the payments that were made</p> <p>23 by Highland in May from liabilities to something</p> <p>24 else?</p> <p>25 A I'm not aware of how the accounting</p>	<p style="text-align: right;">Page 57</p> <p>1 Dustin Norris</p> <p>2 entries have been done since then, but – yeah,</p> <p>3 I'm not aware.</p> <p>4 Q Okay. But you'll – you'll agree that the</p> <p>5 accounting for these two payments was among the</p> <p>6 30(b)(6) topics, correct, Number 11 – Number 10?</p> <p>7 A Yes.</p> <p>8 Q And as the 30(b)(6) witness for HCMFA, can</p> <p>9 you confirm that, to the best of your knowledge,</p> <p>10 those payments were booked as liabilities and the</p> <p>11 booking of those payments as – as liabilities has</p> <p>12 not changed?</p> <p>13 A To the best of my knowledge, they were</p> <p>14 booked as liabilities, and I don't know how they</p> <p>15 have been treated. There's not been a year-end</p> <p>16 audit for 2021, and I'm sure the accountants and</p> <p>17 auditors will determine based on current facts and</p> <p>18 circumstances how those will be reported.</p> <p>19 Q Okay. But as of today, you have no</p> <p>20 knowledge that the booking of those payments as</p> <p>21 liabilities has ever been changed; correct?</p> <p>22 A Those – there's no financial statements</p> <p>23 that are prepared, I believe, intra-year, during</p> <p>24 the year, for audited purposes. And so, you know,</p> <p>25 that – that would be, I'm sure, determined based</p>

<p style="text-align: right;">Page 58</p> <p>1 Dustin Norris</p> <p>2 on any audit needs.</p> <p>3 Q Does HCMFA maintain an accounts payable</p> <p>4 ledger?</p> <p>5 A I'm sure it does.</p> <p>6 Q Did you do anything to try to ascertain</p> <p>7 whether or not these notes appear as liabilities</p> <p>8 on the accounts payable ledger?</p> <p>9 A As current accounts payable ledger?</p> <p>10 Q Yeah.</p> <p>11 A No.</p> <p>12 Q Did you – other than the audited</p> <p>13 financial statements, did you take any steps to</p> <p>14 ascertain how these payments were recorded in</p> <p>15 HCMFA's books and records, or is – or is it only</p> <p>16 on the audited financial statements?</p> <p>17 A So at the time that they were recorded, we</p> <p>18 know they were recorded as liabilities on the</p> <p>19 books and records.</p> <p>20 Q And when you say that it was recorded as a</p> <p>21 liability in the books and records, where in the</p> <p>22 books and records was it recorded as a liability?</p> <p>23 A Meaning on the balance sheet?</p> <p>24 Q Okay. So the balance sheet is one place;</p> <p>25 is that right?</p>	<p style="text-align: right;">Page 59</p> <p>1 Dustin Norris</p> <p>2 A Yes. We record liabilities on the balance</p> <p>3 sheet.</p> <p>4 Q Okay. Did HCMFA complete its audit for</p> <p>5 2019?</p> <p>6 A I don't – not that I'm aware of. I don't</p> <p>7 believe they had an audit for 2019.</p> <p>8 Q Okay. Now, HCMFA contends that the</p> <p>9 payments were – should not have been booked as a</p> <p>10 loan because they were supposed to be compensation</p> <p>11 for the error that Highland made in connection</p> <p>12 with the NAV error; correct?</p> <p>13 A Correct.</p> <p>14 Q Okay. Did HCMFA ever issue an invoice or</p> <p>15 a bill of any kind to Highland?</p> <p>16 A Not that I'm aware of.</p> <p>17 Q Okay. Is there anything in HCMFA's books</p> <p>18 and records that reflects its position that the</p> <p>19 payments should not have been billed as</p> <p>20 liabilities, but they should have been billed as</p> <p>21 income?</p> <p>22 A As compensation?</p> <p>23 Q Yeah.</p> <p>24 A Yes.</p> <p>25 Anything in their records?</p>
<p style="text-align: right;">Page 60</p> <p>1 Dustin Norris</p> <p>2 Q Yes.</p> <p>3 A I – I would refer you to the testimony of</p> <p>4 Mr. Dondero and Mr. Waterhouse, who both testified</p> <p>5 to this; Mr. Dondero that it was compensation, and</p> <p>6 that Frank testified in his deposition that he</p> <p>7 don't – didn't remember Mr. Dondero saying it was</p> <p>8 a loan, and that Mr. Dondero told him to get the</p> <p>9 money from Highland. And so it's – it's – that</p> <p>10 is on the record and in the record.</p> <p>11 But in HCMFA's other records, we have</p> <p>12 the president of HCMLP, Jim Dondero, who made that</p> <p>13 transfer and has said that that is for</p> <p>14 compensation.</p> <p>15 So there is – but there is – I</p> <p>16 wouldn't – I would be surprised to see some kind</p> <p>17 of a settlement agreement or invoice with – to</p> <p>18 affiliates.</p> <p>19 MR. MORRIS: Okay. I move to</p> <p>20 strike.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q And my answer – my question is really</p> <p>23 simple.</p> <p>24 Is there anything in HCMFA's books and</p> <p>25 records that reflects its position that these</p>	<p style="text-align: right;">Page 61</p> <p>1 Dustin Norris</p> <p>2 payments were supposed to be made as compensation</p> <p>3 rather than in the form of loans?</p> <p>4 A I – I would say that the pleadings are a</p> <p>5 part of our books and records now. I would say</p> <p>6 depositions. And within that, it is well</p> <p>7 documented.</p> <p>8 Q Okay. Let me ask a different question</p> <p>9 then.</p> <p>10 Remember we were using the answer date</p> <p>11 as being March 1st, 2021.</p> <p>12 A Correct.</p> <p>13 Q Is there anything in HCMFA's books and</p> <p>14 records that was created prior to March 1st, 2021,</p> <p>15 that corroborates HCMFA's position that the</p> <p>16 payments were intended to be compensation and not</p> <p>17 in the form of a loan?</p> <p>18 A Yeah, and I would, again, refer you to</p> <p>19 DC's – what do you call it – declaration. That</p> <p>20 prior to that, we didn't have access to – to,</p> <p>21 largely, our books and records as that was</p> <p>22 outsourced to Highland Capital Management, LP, and</p> <p>23 to their employees, legal, compliance, and</p> <p>24 accounting. So our position is we did not have</p> <p>25 anything at that point related to this agreement.</p>

<p style="text-align: right;">Page 62</p> <p>1 Dustin Norris</p> <p>2 MR. MORRIS: Okay. I move to</p> <p>3 strike.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q And listen carefully to my question.</p> <p>6 Is HCMFA aware of anything that was</p> <p>7 created prior to the answer date that corroborates</p> <p>8 its position today that the payments were intended</p> <p>9 to be treated as compensation rather than a loan?</p> <p>10 A I – I think as far as books and records</p> <p>11 go, we have NAV error memos, we have communication</p> <p>12 with the SEC. Right?</p> <p>13 There's – there is a lot of</p> <p>14 information related to the services that were</p> <p>15 performed under the shared services agreement,</p> <p>16 were for valuation purposes that Highland had</p> <p>17 created and was responsible for the valuation</p> <p>18 process, and that is a host of documents that are</p> <p>19 in the record, yes.</p> <p>20 MR. MORRIS: Okay. I – I move to</p> <p>21 strike.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q I'm asking about accounting. Maybe it's</p> <p>24 my fault. Okay? I'll – I'll take responsibility</p> <p>25 for this. I'm asking as a matter of accounting.</p>	<p style="text-align: right;">Page 63</p> <p>1 Dustin Norris</p> <p>2 I'm still on 30(b)(6) Topic Number 10.</p> <p>3 Is there anything in HCMFA's books and</p> <p>4 records that was created before the answer date</p> <p>5 that shows that the payment should have been</p> <p>6 accounted for as compensation rather than as a</p> <p>7 loan?</p> <p>8 A As far as an accounting record, I wouldn't</p> <p>9 expect there to be, because the accountant</p> <p>10 function was outsourced to HCMLP, and – and I</p> <p>11 would refer you to our latest response and our</p> <p>12 amended response of – of what was discovered and</p> <p>13 found throughout the process here.</p> <p>14 The accountants recorded a liability</p> <p>15 and they thought it should be liability. And so,</p> <p>16 no, there wasn't anything, to my knowledge, prior</p> <p>17 to that that was in the accounting books and</p> <p>18 records. And I – you know, I'm not surprised</p> <p>19 there wasn't, because of the facts that you'll –</p> <p>20 you'll see in our amended answers.</p> <p>21 Q Okay. Do you know whether, if it was</p> <p>22 intended to be compensation, that HCMFA's income</p> <p>23 statement should have shown the inflow of the</p> <p>24 \$7.4 million?</p> <p>25 A I don't know how it would be reported for</p>
<p style="text-align: right;">Page 64</p> <p>1 Dustin Norris</p> <p>2 accounting purposes. I – I do have an accounting</p> <p>3 background, but I haven't done accounting in a</p> <p>4 long time, and I'm not an expert in adviser</p> <p>5 financial statements. So I would say I don't</p> <p>6 have – and I guess – I guess that – stepping</p> <p>7 back and answering on behalf of the company here,</p> <p>8 I don't have a knowledge of how that would be</p> <p>9 recorded for income statement purposes.</p> <p>10 Q Okay.</p> <p>11 A But it would – it would be compensation</p> <p>12 that would be reported –</p> <p>13 Q Okay.</p> <p>14 A – somewhere in the financial statements.</p> <p>15 Q So it's your testimony today, as HCMFA's</p> <p>16 30(b)(6) witness, that HCMFA was unaware that its</p> <p>17 audited financial statements disclosed these notes</p> <p>18 until after the lawsuit was commenced.</p> <p>19 Do I have that right?</p> <p>20 A That's correct.</p> <p>21 Q And it's your position today, as HCMFA's</p> <p>22 30(b)(6) witness, that HCMFA was unaware that the</p> <p>23 payments that were made by Highland were booked as</p> <p>24 liabilities until sometime after the lawsuit was</p> <p>25 commenced; correct?</p>	<p style="text-align: right;">Page 65</p> <p>1 Dustin Norris</p> <p>2 A Yes, that's correct. The accounting</p> <p>3 function was outsourced to HCMLP.</p> <p>4 Q Okay. And there's – was there anybody –</p> <p>5 was there any officer of HCMFA who had</p> <p>6 responsibility for reviewing HCMFA's balance</p> <p>7 sheet?</p> <p>8 A I believe I already answered this earlier.</p> <p>9 Q I actually asked the question on the</p> <p>10 audited financial statements.</p> <p>11 A Okay.</p> <p>12 Q Now I'm going to ask specifically. Is</p> <p>13 there anybody who served as an officer of HCMFA</p> <p>14 who had the responsibility of making sure that</p> <p>15 HCMFA's balance sheets were true and accurate?</p> <p>16 A Yes. So Frank Waterhouse and his team,</p> <p>17 Frank was the named treasurer of HCMFA, and his</p> <p>18 role at HCMLP, as a service provider, would have</p> <p>19 had that responsibility along with his team.</p> <p>20 Q Okay. Let's go to the next topic,</p> <p>21 Topic 11. Do you see Topic 11 refers to</p> <p>22 "communications in 2020 with any retail board –</p> <p>23 A Yes.</p> <p>24 Q – concerning the amounts due and owing to</p> <p>25 Highland"?</p>

<p style="text-align: right;">Page 66</p> <p>1 Dustin Norris</p> <p>2 A Yes, I do.</p> <p>3 Q Okay. HCMFA is a financial advisory firm;</p> <p>4 correct?</p> <p>5 A It is.</p> <p>6 Q And it provides advisory services to</p> <p>7 certain funds; correct?</p> <p>8 A It does.</p> <p>9 Q And those advisory services are provided</p> <p>10 pursuant to written agreements; correct?</p> <p>11 A They are.</p> <p>12 Q And those agreements are subject to annual</p> <p>13 review; correct?</p> <p>14 A They are.</p> <p>15 Q And those agreements the principal source</p> <p>16 of HCMFA's revenue?</p> <p>17 A Yes, I believe so.</p> <p>18 Q Okay. It's among the most important</p> <p>19 contracts HCMFA has; correct?</p> <p>20 A Yes.</p> <p>21 Q In fact, it's the reason for HCMFA's</p> <p>22 existence, is that fair, is to serve the funds?</p> <p>23 A Largely, yes.</p> <p>24 Q And the funds are managed by boards;</p> <p>25 correct?</p>	<p style="text-align: right;">Page 67</p> <p>1 Dustin Norris</p> <p>2 A Correct.</p> <p>3 Q And can we refer to the boards that manage</p> <p>4 the funds that are served by the advisers as "the</p> <p>5 retail board"?</p> <p>6 A Yes.</p> <p>7 Q Okay. Did you participate – are you</p> <p>8 aware that in the fall of 2020 the retail board</p> <p>9 conducted a review in connection with the</p> <p>10 determination as to whether or not to renew</p> <p>11 HCMFA's contracts?</p> <p>12 A I am aware, yes.</p> <p>13 Q Did you participate in that process?</p> <p>14 A I did, in some – in some parts, yes.</p> <p>15 Q What parts did you participate in?</p> <p>16 A Yeah, so I attended the board meetings in</p> <p>17 relation to – we call this the 15(c) analysis.</p> <p>18 And so it's Section 15(c) of the 1940 Act requires</p> <p>19 the board to determine and renew the contracts on</p> <p>20 an annual basis. And so they look at a number of</p> <p>21 factors. And there's, I believe, certain case law</p> <p>22 that dictates the things that they should look at:</p> <p>23 Quality of services, performance, fees.</p> <p>24 And so my aspect – the biggest part</p> <p>25 of my contribution is to talk about the</p>
<p style="text-align: right;">Page 68</p> <p>1 Dustin Norris</p> <p>2 performance of the funds, how they performed</p> <p>3 during the year. We hire an outside third party</p> <p>4 to come in and talk about performance and fees. I</p> <p>5 help provide insight, talk about – as I oversee</p> <p>6 the sales and business development of the firm, I</p> <p>7 talk about inflows and outflows, which help –</p> <p>8 helps impact the economies of scale funds. We</p> <p>9 have certain funds that are shrinking, some that</p> <p>10 are growing. So talking about future, talking</p> <p>11 about mergers, talking about different aspects of</p> <p>12 that.</p> <p>13 And so my – mine is more of the sales</p> <p>14 business development function and regarding the</p> <p>15 services. One of the things that we do as the</p> <p>16 adviser is we, again – they have to determine</p> <p>17 that the quality of services we're providing are</p> <p>18 sufficient, and so they have to get comfortable</p> <p>19 with the various functions.</p> <p>20 Q Okay. Who else on behalf of HCMFA</p> <p>21 participated in the 15(c) analysis that you've</p> <p>22 just described?</p> <p>23 A Yeah, so as – again, going back to the</p> <p>24 shared services agreement, I point you to the</p> <p>25 services that are provided by HCMLP. In large</p>	<p style="text-align: right;">Page 69</p> <p>1 Dustin Norris</p> <p>2 part, this process is managed and run by the HCMLP</p> <p>3 employees as part of that shared services. Legal</p> <p>4 and compliance help draft the memos. They are –</p> <p>5 Q And I'm going to interrupt you, and I</p> <p>6 really apologize for doing that. I'm not asking</p> <p>7 about HCMLP.</p> <p>8 A Yeah.</p> <p>9 Q These are – these are HCMFA's contracts;</p> <p>10 correct?</p> <p>11 A They are.</p> <p>12 Q And they're the most important contracts</p> <p>13 that HCMFA has; correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. So who – which officers of HCMFA</p> <p>16 are involved in the 15(c) analysis?</p> <p>17 A Yeah, one – going back to – to clarify</p> <p>18 on your – you know, this is the most important</p> <p>19 thing, you know, that we have, it is, and as such</p> <p>20 we have – a lot of those functions, and to talk</p> <p>21 about HCMFA's role, we have front-office</p> <p>22 investment professionals who join those meetings</p> <p>23 to talk about the funds and performance. The</p> <p>24 aspects of the adviser that we provide and source</p> <p>25 is the management of the funds: The performance,</p>



<p style="text-align: right;">Page 70</p> <p>1 Dustin Norris</p> <p>2 the investment selection. And then we bring in</p> <p>3 HCMLP to provide the various other services. And</p> <p>4 so they are a huge part of that. To say that –</p> <p>5 yeah, it's not – they are legal, compliance,</p> <p>6 accounting, finance, back office, settlement.</p> <p>7 Those are all functions that they're providing.</p> <p>8 Q I know – I appreciate that they're</p> <p>9 functions that they play under the shared services</p> <p>10 agreement.</p> <p>11 A Yup.</p> <p>12 Q Let me – let me move on.</p> <p>13 A Okay. Go ahead.</p> <p>14 Q In October 2020, HCMFA informed the retail</p> <p>15 board that HCMFA was obligated to pay Highland the</p> <p>16 outstanding principal amount due under the notes;</p> <p>17 correct?</p> <p>18 MR. RUKAVINA: Objection; form.</p> <p>19 THE WITNESS: Yeah, the</p> <p>20 obligated – I would – sorry. Can you</p> <p>21 ask the question again?</p> <p>22 BY MR. MORRIS:</p> <p>23 Q Sure.</p> <p>24 In October 2020, HCMFA informed the</p> <p>25 retail board of the existence of the notes;</p>	<p style="text-align: right;">Page 71</p> <p>1 Dustin Norris</p> <p>2 correct?</p> <p>3 A Not that I'm aware of. If you have</p> <p>4 something you could – you know, a document or</p> <p>5 something that you're thinking of?</p> <p>6 Q So you participated in the 15(c) process,</p> <p>7 and you have no knowledge of HCMFA informing the</p> <p>8 retail board of the existence of the notes?</p> <p>9 A Of these notes? No. And I would say that</p> <p>10 there was a question from the retail board posed</p> <p>11 to the advisers, which we passed along to HCMLP,</p> <p>12 which included Lauren Thedford as an HCMLP</p> <p>13 employee and Frank Waterhouse, is: Were there any</p> <p>14 liabilities to – owed to Highland?</p> <p>15 Q So let's take a look – I'm sorry. Go</p> <p>16 ahead.</p> <p>17 A No, go ahead.</p> <p>18 Q I was going to say, let's take a look at</p> <p>19 that.</p> <p>20 MR. MORRIS: So if we could put up</p> <p>21 on the screen Exhibit 59.</p> <p>22 (Exhibit 59 tendered.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q Have you seen this document before, sir?</p> <p>25 A I have.</p>
<p style="text-align: right;">Page 72</p> <p>1 Dustin Norris</p> <p>2 Q And this is the report that the advisers</p> <p>3 gave to the retail board in October 2020 as part</p> <p>4 of the 15(c) analysis; correct?</p> <p>5 A Yes, working closely with HCMLP in the</p> <p>6 accounting, compliance, and legal function did</p> <p>7 draft this.</p> <p>8 Q Okay. And who – who on behalf of the</p> <p>9 advisers authorized the sending of this memo?</p> <p>10 A I don't know that there's a formal</p> <p>11 authorization. Lauren Thedford, who was the</p> <p>12 secretary of the advisers and an HCMLP employee,</p> <p>13 helped prepare the memo along with the rest of the</p> <p>14 legal and compliance team. Thomas Sargent was</p> <p>15 probably involved.</p> <p>16 MR. MORRIS: Okay. I'm going to</p> <p>17 move to strike.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q I don't want to know who was probably</p> <p>20 involved. I actually asked a very specific</p> <p>21 question, and if you don't know, please just say</p> <p>22 you don't know.</p> <p>23 Who on behalf of the advisers</p> <p>24 authorized the sending of this memo to the retail</p> <p>25 board?</p>	<p style="text-align: right;">Page 73</p> <p>1 Dustin Norris</p> <p>2 A I don't know.</p> <p>3 Q Did anybody on behalf of the advisers ever</p> <p>4 suggest that this memo was wrong or inaccurate in</p> <p>5 any way to the best of your knowledge?</p> <p>6 A At that time? Is that what you mean?</p> <p>7 Q Yes.</p> <p>8 A No, not – not to my knowledge.</p> <p>9 Q Okay. When did you see this memo for the</p> <p>10 first time?</p> <p>11 A I may have been copied on it at the time.</p> <p>12 I don't remember if I read it, but I did review</p> <p>13 it – and actually, I didn't review the whole</p> <p>14 memo. I reviewed the one email that was related</p> <p>15 to the note payable in this. So I don't know that</p> <p>16 I read the whole memo.</p> <p>17 Q So – so –</p> <p>18 MR. MORRIS: Can we see how long</p> <p>19 the memo is?</p> <p>20 BY MR. MORRIS:</p> <p>21 Q So it's two pages, and it's got some</p> <p>22 charts; is that fair?</p> <p>23 A That's fair.</p> <p>24 Q And in October 2020, you were the</p> <p>25 executive vice president of every single entity</p>



<p style="text-align: right;">Page 74</p> <p>1 Dustin Norris</p> <p>2 that this email is being sent to and from;</p> <p>3 correct?</p> <p>4 A I'm looking at the entities.</p> <p>5 I'm executive vice president of most</p> <p>6 of the entities.</p> <p>7 Q Okay. You're the executive vice president</p> <p>8 of each of the entities that are sending this</p> <p>9 memo; correct?</p> <p>10 A No. Not NexPoint Securities.</p> <p>11 Q I appreciate that. Thank you for the</p> <p>12 clarification.</p> <p>13 Did you review this before it was</p> <p>14 sent?</p> <p>15 A I don't remember.</p> <p>16 Q Did you take any steps to make sure that</p> <p>17 it was accurate?</p> <p>18 A Probably not. And that wouldn't have been</p> <p>19 my function. We had a legal and compliance team</p> <p>20 that was – through the shared services agreement</p> <p>21 that prepared memos. This is going to the board.</p> <p>22 That would have all obviously gone through legal</p> <p>23 and compliance. It wouldn't have been my</p> <p>24 function.</p> <p>25 Q Did anybody who served as an officer or</p>	<p style="text-align: right;">Page 75</p> <p>1 Dustin Norris</p> <p>2 employee of HCMFA have any responsibility to make</p> <p>3 sure that this memo was true and accurate before</p> <p>4 it was sent to the retail board?</p> <p>5 A Lauren Thedford was the secretary of the</p> <p>6 advisers and the funds, and I believe this has to</p> <p>7 do with – and depending on the material, I think</p> <p>8 this has to do with the note, and other things.</p> <p>9 So the finance team, Frank Waterhouse and his team</p> <p>10 at HCMLP, would have been supplying those answers.</p> <p>11 Q Okay. And why do you keep saying Frank</p> <p>12 Waterhouse at HCMLP instead of Frank Waterhouse as</p> <p>13 the treasurer of the entity that's sending this</p> <p>14 memo?</p> <p>15 A Because Frank was the CFO of Highland who</p> <p>16 was responsible for the accounting, finance,</p> <p>17 back-office functions of these funds. And the</p> <p>18 answer – the adviser did not have that</p> <p>19 information, and intentionally hired HCMLP to</p> <p>20 provide that function. And so that is how it was</p> <p>21 viewed. Those were HCMLP employees, and that was</p> <p>22 under the shared services agreement.</p> <p>23 Q Is it your testimony as the HCMFA 30(b)(6)</p> <p>24 witness that Frank Waterhouse did not have any</p> <p>25 responsibility in his capacity as the treasurer of</p>
<p style="text-align: right;">Page 76</p> <p>1 Dustin Norris</p> <p>2 HCMFA to make sure that this report was true and</p> <p>3 accurate before it was sent to the retail board?</p> <p>4 A I don't know of any function or</p> <p>5 requirement of his role as treasurer of HCMFA that</p> <p>6 he was responsible for reviewing 15(c) memos prior</p> <p>7 to going to the board.</p> <p>8 Q And other than Lauren Thedford, you can't</p> <p>9 identify any officer or employee of HCMFA who had</p> <p>10 any responsibility to make sure that this report</p> <p>11 was true and accurate before it was sent; is that</p> <p>12 correct?</p> <p>13 A No. And I can't – and I would, again, go</p> <p>14 back to legal. And this is a memo that is going</p> <p>15 to the board and is a legal and compliance</p> <p>16 function that would have been provided services by</p> <p>17 HCMLP. And that was always the case. Those</p> <p>18 employees, for years, have provided the</p> <p>19 legal/compliance support of memos of the 15(c)</p> <p>20 process and the support for everything that went</p> <p>21 into it.</p> <p>22 MR. MORRIS: Okay. Move to strike.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q Do you know if Jim Dondero reviewed this</p> <p>25 before it was sent?</p>	<p style="text-align: right;">Page 77</p> <p>1 Dustin Norris</p> <p>2 A I don't know for sure, but I highly doubt.</p> <p>3 He was never, to my knowledge, involved in</p> <p>4 drafting or reviewing 15(c) memos.</p> <p>5 Q Okay. You'll agree that this memo was</p> <p>6 sent by the advisers in response to the retail</p> <p>7 board's questions; correct?</p> <p>8 A Correct.</p> <p>9 Q And you'll agree –</p> <p>10 A And actually, let me – let me correct</p> <p>11 that.</p> <p>12 It was from the advisers. I believe</p> <p>13 that HCMLP employees sent it, getting back to –</p> <p>14 it was sent by – technicality, but I believe</p> <p>15 Lauren Thedford would have sent this.</p> <p>16 Q And why do you say that she sent it in her</p> <p>17 capacity as an HCMLP employee rather than as the</p> <p>18 secretary of the entity that's actually the author</p> <p>19 of the memo?</p> <p>20 A Because that was the function that they</p> <p>21 were providing as part of the shared services</p> <p>22 agreement. And I – yeah. That was what – she's</p> <p>23 part of the legal team at HCMLP, and that was the</p> <p>24 service she was providing. We didn't have a legal</p> <p>25 and compliance function at HCMFA.</p>

<p style="text-align: right;">Page 78</p> <p>1 Dustin Norris</p> <p>2 Q Okay.</p> <p>3 MR. MORRIS: Can we scroll down to</p> <p>4 Question 2, please?</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Have you seen Question 2 before?</p> <p>7 A Yes.</p> <p>8 Q Do you have an understanding of what was</p> <p>9 being requested by the retail board in Question</p> <p>10 Number 2?</p> <p>11 A Yes. They are asking for amounts</p> <p>12 currently payable or due in the future to HCMLP by</p> <p>13 HCMFA or NexPoint Advisors.</p> <p>14 Q And – and did the advisers report to the</p> <p>15 retail board in October 2020 that, quote,</p> <p>16 "\$12,286,000 remains outstanding to HCMLP from</p> <p>17 HCMFA"?</p> <p>18 A It says it right there. That's in the</p> <p>19 memo.</p> <p>20 Q Okay.</p> <p>21 A And I would note that came from Frank</p> <p>22 Waterhouse and his team, that information, the</p> <p>23 accounting department at HCMLP.</p> <p>24 MR. MORRIS: Okay. I move to</p> <p>25 strike everything after the portion of</p>	<p style="text-align: right;">Page 79</p> <p>1 Dustin Norris</p> <p>2 your answer that was responsive to my</p> <p>3 question.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q As HCMFA's 30(b)(6) witness today, have</p> <p>6 you done anything to determine whether or not the</p> <p>7 \$12.286 million number includes the principal</p> <p>8 amount of the notes?</p> <p>9 A Looking at it, we can't tell. Because it</p> <p>10 doesn't line up exactly with those notes. There</p> <p>11 were other notes that had been recorded in the</p> <p>12 books for several years before. And if you add</p> <p>13 those two together, it doesn't add up. So it's</p> <p>14 not clear.</p> <p>15 Q Did you read the testimony of Mr. Klos and</p> <p>16 Ms. Hendrix? I think you said you did; right?</p> <p>17 A I did.</p> <p>18 Q Did you read the portion of their</p> <p>19 testimony where they said that this number</p> <p>20 includes the notes as well as certain other</p> <p>21 amounts that were due and owing to certain</p> <p>22 Highland affiliates?</p> <p>23 A I did – I didn't read every single line,</p> <p>24 and there were, between the two of them – I don't</p> <p>25 know – 600 pages. So if it's in there and you</p>
<p style="text-align: right;">Page 80</p> <p>1 Dustin Norris</p> <p>2 can point to it, then I can take your</p> <p>3 representation. But I don't remember that.</p> <p>4 Q All right. So did anybody acting on</p> <p>5 behalf of HCMFA – withdrawn.</p> <p>6 Did any officer of – or employee of</p> <p>7 HCMFA do anything to make sure the information in</p> <p>8 this response was true and accurate before it was</p> <p>9 sent to the retail board?</p> <p>10 A We received it from the individuals</p> <p>11 responsible. And there was no – you know, there</p> <p>12 was no reason to doubt that it was incorrect.</p> <p>13 Right? These were professionals. We were relying</p> <p>14 on them. This is Frank Waterhouse, Dave Klos,</p> <p>15 Kristen. We anticipated this would be accurate.</p> <p>16 Q Okay. You anticipated it. But it's your</p> <p>17 testimony that no officer or employee of HCMFA did</p> <p>18 anything independently to make sure that it was</p> <p>19 accurate; that they completely and 100 percent</p> <p>20 just deferred and relied on somebody else under a</p> <p>21 contract?</p> <p>22 A Frank Waterhouse was the treasurer. You</p> <p>23 said any – any officer. He was – in his role,</p> <p>24 he provided this information. And I don't know</p> <p>25 his extent of how he looked into it, but if you</p>	<p style="text-align: right;">Page 81</p> <p>1 Dustin Norris</p> <p>2 look at the email chain, it didn't look too</p> <p>3 extensive. And if you even look at this, he's</p> <p>4 saying that the earliest the note between HCMLP</p> <p>5 and HCMFA can come due is May 21st. He himself</p> <p>6 seems to be confused here, because as we found out</p> <p>7 through discovery and in the testimony of what has</p> <p>8 come out, there was an agreement – that was a</p> <p>9 separate agreement. That wasn't related to the</p> <p>10 notes at issue in this case.</p> <p>11 And so I don't know the extent that</p> <p>12 was gone into this, but it – it – there's</p> <p>13 confusion even in the response.</p> <p>14 MR. MORRIS: Okay. I move to</p> <p>15 strike.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q Again, I was just asking about the</p> <p>18 identity of anybody who was charged with the</p> <p>19 responsibility of making sure that this was true</p> <p>20 and accurate.</p> <p>21 Is there any officer or employee of</p> <p>22 HCMFA who was charged with the responsibility of</p> <p>23 making sure this response was true and accurate?</p> <p>24 A Yeah. It was sent to – the request went</p> <p>25 to Frank Waterhouse because he and his team would</p>

<p style="text-align: right;">Page 82</p> <p>1 Dustin Norris</p> <p>2 have this information. That's -- that's where we</p> <p>3 would get this information.</p> <p>4 Q Okay. Thank you.</p> <p>5 MR. RUKAVINA: Hey, John, let me</p> <p>6 just interject for a little. Let's go off</p> <p>7 the record for just a minute.</p> <p>8 (Discussion off the record.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q Do you know, as HCMFA's 30(b)(6)</p> <p>11 representative, whether the \$12.286 million</p> <p>12 includes the \$7.5 million -- withdrawn.</p> <p>13 Do you know if the 12. -- withdrawn.</p> <p>14 As HCMFA's 30(b)(6) witness, do you</p> <p>15 know whether the \$12.286 million referenced in</p> <p>16 Response Number 2 includes the \$7.4 million in</p> <p>17 principal amount on the notes?</p> <p>18 A I don't.</p> <p>19 Q Okay. Did you do anything to try to</p> <p>20 answer that question before appearing for today's</p> <p>21 deposition?</p> <p>22 A Yeah. We discussed this with counsel. We</p> <p>23 don't have underlying backup. We couldn't talk to</p> <p>24 Frank Waterhouse on this in preparation, but the</p> <p>25 numbers just don't match up to principal amounts</p>	<p style="text-align: right;">Page 83</p> <p>1 Dustin Norris</p> <p>2 and what is owing. We don't have information on</p> <p>3 the other notes. So discussed it with counsel,</p> <p>4 but I -- we don't have any backup to support or --</p> <p>5 Q Did you make -- did you make any attempt</p> <p>6 to speak with Ms. Thedford?</p> <p>7 A No, I didn't. And she wouldn't have that</p> <p>8 information. She's an attorney and was involved</p> <p>9 in the legal field, and she's no longer employed</p> <p>10 there or at Skyview.</p> <p>11 MR. MORRIS: I move to strike.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q Okay. And so you don't know what the</p> <p>14 component parts of this \$12.286 million number</p> <p>15 are; correct?</p> <p>16 A I don't.</p> <p>17 Q Okay. Do you see the last sentence of</p> <p>18 this response that says, quote: "The adviser</p> <p>19 notes that both entities have the full faith and</p> <p>20 support of Jim Dondero," close quote?</p> <p>21 A I do.</p> <p>22 Q Do you know what that means?</p> <p>23 A Other than what Frank Waterhouse</p> <p>24 testified -- and I, again, refer you to his</p> <p>25 deposition -- that -- I believe that wording came</p>
<p style="text-align: right;">Page 84</p> <p>1 Dustin Norris</p> <p>2 from him, and he emailed that. So I would refer</p> <p>3 you to his testimony.</p> <p>4 Q Well, as the 30(b)(6) witness, you were</p> <p>5 asked to be prepared about communications to the</p> <p>6 retail board; correct?</p> <p>7 A Yes.</p> <p>8 Q Okay. Did you do anything to try to</p> <p>9 figure out what that sentence meant -- that</p> <p>10 sentence meant, other than reading Frank</p> <p>11 Waterhouse's deposition transcript?</p> <p>12 A Knowing that it came from Frank, and Frank</p> <p>13 elaborated, I didn't do any additional research.</p> <p>14 Q Did you ask Mr. Dondero if he was aware</p> <p>15 that that statement was included in the report to</p> <p>16 the retail board?</p> <p>17 A I did not.</p> <p>18 Q Do you know why this statement was</p> <p>19 included in the report to the retail board?</p> <p>20 A I could speculate, but I don't know</p> <p>21 specifically.</p> <p>22 Q Do you know if Mr. Dondero authorized the</p> <p>23 advisers to inform the retail board, in October</p> <p>24 of 2020, that the advisers had the full faith and</p> <p>25 support of Mr. Dondero?</p>	<p style="text-align: right;">Page 85</p> <p>1 Dustin Norris</p> <p>2 A I'm not aware, and if you look at Frank's</p> <p>3 testimony, I believe he testified that he -- he</p> <p>4 didn't have that authority either, but I'm not</p> <p>5 sure. I would refer you to his -- I don't have</p> <p>6 any other knowledge.</p> <p>7 Q Okay. So it's HCMFA's position that the</p> <p>8 statement in the last sentence of Response</p> <p>9 Number 2 was unauthorized. Do I have that</p> <p>10 correctly?</p> <p>11 A I don't know that we're taking that</p> <p>12 position either way. It wasn't something</p> <p>13 that -- that we're -- was even part of the -- our</p> <p>14 arguments.</p> <p>15 Q I'm not asking if it's part of your</p> <p>16 arguments. I'm just asking you, as a factual</p> <p>17 matter, does HCMFA contend that that sentence was</p> <p>18 included without authorization?</p> <p>19 A I don't have the knowledge of that.</p> <p>20 That's -- I'm not going to contend that.</p> <p>21 Q Okay.</p> <p>22 A It may have been. I don't know.</p> <p>23 Q Okay. So this letter was sent over a year</p> <p>24 ago. Do I have that right?</p> <p>25 A What's the date on it?</p>

<p style="text-align: right;">Page 86</p> <p>1 Dustin Norris</p> <p>2 MR. MORRIS: If we can go back to</p> <p>3 the top.</p> <p>4 THE WITNESS: Yup.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Okay. Has – have the advisers ever told</p> <p>7 the retail board that the response to Question</p> <p>8 Number 2 was inaccurate in any way?</p> <p>9 A Specifically saying, "Hey, let me tell you</p> <p>10 this memo, Question 2, let me go back, it was</p> <p>11 inaccurate," no, that was never a specific</p> <p>12 disclosure of the retail board.</p> <p>13 However, the retail board is aware of</p> <p>14 all of the facts and circumstances surrounding the</p> <p>15 notes, and so they're aware of our position.</p> <p>16 They're aware of – they've been demanded.</p> <p>17 There's been a lawsuit involved on both notes.</p> <p>18 And – and – but, no, this specific</p> <p>19 Number 2 is incorrect, no. But they're aware of</p> <p>20 our position and what we found out since then.</p> <p>21 Q Okay. Earlier in 2020, before this memo</p> <p>22 was sent to the retail board, HCMFA had provided</p> <p>23 to the retail board its financial statements for</p> <p>24 the period ending June 30, 2020; correct?</p> <p>25 A I believe that's typical in our August</p>	<p style="text-align: right;">Page 87</p> <p>1 Dustin Norris</p> <p>2 meeting as part of the 15(c) process, but – I</p> <p>3 don't know if you have that in hand, but I believe</p> <p>4 that was supplied. I'm not certain. Sometimes it</p> <p>5 was 12/31 balance sheets, sometimes it was a</p> <p>6 June 30th balance sheet.</p> <p>7 Q Okay. Can we – are you aware – have you</p> <p>8 seen an email exchange that preceded the – the</p> <p>9 finalization of this memo to the retail board?</p> <p>10 A I believe it was part of your exhibits.</p> <p>11 Q All right.</p> <p>12 MR. MORRIS: So let's put that up</p> <p>13 on the screen, Exhibit 36.</p> <p>14 (Exhibit 36 tendered.)</p> <p>15 BY MR. MORRIS:</p> <p>16 Q So is this the document that you've seen</p> <p>17 before?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 MR. MORRIS: And can we start at</p> <p>21 the bottom of the document?</p> <p>22 BY MR. MORRIS:</p> <p>23 Q Okay. And do you know who Stacy from</p> <p>24 Blank Rome is?</p> <p>25 A I do.</p>
<p style="text-align: right;">Page 88</p> <p>1 Dustin Norris</p> <p>2 Q And who is that?</p> <p>3 A She is independent counsel for the retail</p> <p>4 board, the independent directors.</p> <p>5 Q And did she provide to the people on this</p> <p>6 email string certain questions that the retail</p> <p>7 board had in connection with its annual 15(c)</p> <p>8 review?</p> <p>9 A Yes. These were follow-up requests. So</p> <p>10 they have a memo that she provides early on with</p> <p>11 an extensive list of questions, and these were the</p> <p>12 follow-up questions from the board.</p> <p>13 Q Okay. And so it was sent to you,</p> <p>14 actually; correct?</p> <p>15 A To me and Lauren.</p> <p>16 MR. MORRIS: Can we scroll up a</p> <p>17 little bit, please? Keep going.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q And then Lauren forwards it to certain</p> <p>20 people, including you; correct?</p> <p>21 A She forwards it to Thomas and copies me.</p> <p>22 Q Uh-huh. And – and she includes the</p> <p>23 questions that are being asked by the retail</p> <p>24 board; correct?</p> <p>25 A I don't know if – I don't know if that's</p>	<p style="text-align: right;">Page 89</p> <p>1 Dustin Norris</p> <p>2 all of them. I don't know if you have the memo.</p> <p>3 If you represent that is all the questions,</p> <p>4 then –</p> <p>5 Q Yeah.</p> <p>6 A – then I'll take that representation,</p> <p>7 but –</p> <p>8 Q And – and Question Number 2 is the same</p> <p>9 Question Number 2 that we just looked at in the</p> <p>10 report that was given to the retail board;</p> <p>11 correct?</p> <p>12 A I don't know if it's exact, but – I don't</p> <p>13 know if you want to pull that up.</p> <p>14 Q Don't you have a copy of it with you right</p> <p>15 there?</p> <p>16 A I don't know if I have a copy of that.</p> <p>17 Oh, I have the exhibits. What exhibit was that?</p> <p>18 I have it in PDF.</p> <p>19 Q Yeah, that's – that was 59.</p> <p>20 A I'm scrolling. There are 650 pages here.</p> <p>21 Sorry. Which exhibit again?</p> <p>22 Q You know, let's just move on.</p> <p>23 Is it fair to say that Ms. Thedford</p> <p>24 forwarded to Mr. Surgent, you, and others,</p> <p>25 questions that had been presented by Stacy, the</p>

<p style="text-align: right;">Page 90</p> <p>1 Dustin Norris</p> <p>2 retail board's outside counsel?</p> <p>3 A Just one correction there. She forwarded</p> <p>4 it to Mr. Surgent and copied me.</p> <p>5 Q Fair enough.</p> <p>6 A I'm not on the "To" line. That would</p> <p>7 be --</p> <p>8 MR. MORRIS: Let's scroll down,</p> <p>9 please. Let's scroll.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q And then -- and then she forwards it</p> <p>12 further to Mr. Waterhouse, Mr. Klos, and</p> <p>13 Ms. Hendrix.</p> <p>14 Do you see that?</p> <p>15 A I do.</p> <p>16 Q And you're still copied on it; correct?</p> <p>17 A I am.</p> <p>18 Q And do you see that she's asking Frank,</p> <p>19 Mr. Klos, and Kristin to respond to Question</p> <p>20 Number 2 that concerns material outstanding</p> <p>21 amounts currently payable or due in the future to</p> <p>22 Highland or its affiliates by either of the</p> <p>23 advisers?</p> <p>24 A Yes, it -- HCMLP will take that as a typo.</p> <p>25 But yes. And that would be standard. Lauren</p>	<p style="text-align: right;">Page 91</p> <p>1 Dustin Norris</p> <p>2 would go to them as the source for that</p> <p>3 information.</p> <p>4 Q Okay.</p> <p>5 MR. MORRIS: And let's scroll up</p> <p>6 and see the response.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q And do you see Mr. Waterhouse responded</p> <p>9 with one word: "Yes"?</p> <p>10 A Yes, I see that.</p> <p>11 Q And then Ms. Thedford asked if</p> <p>12 Mr. Waterhouse could provide the amounts.</p> <p>13 Do you see that?</p> <p>14 A I do.</p> <p>15 Q And you're still copied on this email</p> <p>16 chain; correct?</p> <p>17 A I am.</p> <p>18 Q So --</p> <p>19 A Which, again, is not unusual to copy me on</p> <p>20 some things I wish they wouldn't. But I was</p> <p>21 copied on board items fairly regularly.</p> <p>22 MR. MORRIS: Okay. I move to</p> <p>23 strike.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q I appreciate your wishes, but the question</p>
<p style="text-align: right;">Page 92</p> <p>1 Dustin Norris</p> <p>2 was simply whether or not, you know, you would</p> <p>3 acknowledge that you were copied on this email.</p> <p>4 A Yup, that's my email.</p> <p>5 Q Okay. And let's see what the next</p> <p>6 response is.</p> <p>7 And do you see Mr. Waterhouse</p> <p>8 responds -- can you read Mr. Waterhouse's</p> <p>9 response?</p> <p>10 A I can. He said: "It's on the balance</p> <p>11 sheet that was provided the board as part of the</p> <p>12 15(c) materials."</p> <p>13 Q Okay. So everybody to whom Mr. Waterhouse</p> <p>14 has sent -- withdrawn.</p> <p>15 So you don't dispute, as HCMFA's</p> <p>16 30(b)(6) witness, that Mr. Waterhouse informed all</p> <p>17 of the recipients of his email on Tuesday,</p> <p>18 October 6th, 2020, at 6:05 p.m. that the answer to</p> <p>19 the retail board's Question Number 2 could be</p> <p>20 found in HCMFA's balance sheet; correct?</p> <p>21 A Correct.</p> <p>22 Q Okay. Let's go --</p> <p>23 A Actually, can you go back down to the</p> <p>24 answer -- the exact question?</p> <p>25 Q Of course.</p>	<p style="text-align: right;">Page 93</p> <p>1 Dustin Norris</p> <p>2 Okay.</p> <p>3 A "Are there material outstanding amounts</p> <p>4 currently payable or due to the future by HCMLP to</p> <p>5 HCMFA" -- yeah -- "or any other affiliate?"</p> <p>6 Okay.</p> <p>7 Q Having read that, does that change your</p> <p>8 answer at all?</p> <p>9 A And so -- go back to your original</p> <p>10 question on whether his --</p> <p>11 Q Right. So Mr. --</p> <p>12 MR. MORRIS: Can we scroll back up</p> <p>13 to Mr. Waterhouse's response?</p> <p>14 BY MR. MORRIS:</p> <p>15 Q Thank you for your patience, Mr. Norris.</p> <p>16 A Uh-huh.</p> <p>17 Q You'll see that Mr. Waterhouse responds at</p> <p>18 6:05 p.m. on October 6th, and my question is a</p> <p>19 simple one: Does HCMFA dispute that in</p> <p>20 Mr. Waterhouse's email that he is telling the</p> <p>21 recipients that the answer to the retail board's</p> <p>22 Question Number 2 can be found in HCMFA's balance</p> <p>23 sheet?</p> <p>24 A I would say the answer -- his -- his</p> <p>25 response is the answer to the retail board is not</p>



<p style="text-align: right;">Page 94</p> <p>1 Dustin Norris</p> <p>2 completely accurate, because there was – there's</p> <p>3 not enough there to be responsive. I think what</p> <p>4 he's saying here is to Lauren, "Hey, it's on the</p> <p>5 balance sheet. Can you look at it and figure it</p> <p>6 out?"</p> <p>7 And I – I think they go back and</p> <p>8 forth, "Well, can you give us more information?"</p> <p>9 And so it's – this is not responsive to the</p> <p>10 question and isn't what was provided to the board,</p> <p>11 but that's –</p> <p>12 Q Well, let – let's see what Ms. Thedford</p> <p>13 does. Ms. Thedford's the lawyer, right?</p> <p>14 A She is.</p> <p>15 Q Yeah. But she's also the secretary of</p> <p>16 HCMFA; correct?</p> <p>17 A At this time, I believe so, yes.</p> <p>18 Q And you wouldn't dispute that she is</p> <p>19 taking the lead on formulating the advisers'</p> <p>20 response to the retail board; correct?</p> <p>21 A I would not dispute that.</p> <p>22 Q Okay. And do you see that she reports to</p> <p>23 you and everybody else in her email that she has</p> <p>24 taken information from the 6/30 financials?</p> <p>25 A Yes, I see the below from the 6/30</p>	<p style="text-align: right;">Page 95</p> <p>1 Dustin Norris</p> <p>2 financials. And, again, to correct to me, I'm</p> <p>3 CC'd. It's a nuance, but she's representing to</p> <p>4 Frank and Dave and Kristin with a CC to me.</p> <p>5 Q Okay. Does HCMFA acknowledge that the</p> <p>6 information contained in the October 23rd, 2020,</p> <p>7 report to the retail board with respect to</p> <p>8 Question Number 2 was derived from HCMFA's</p> <p>9 June 30th, 2020, financials?</p> <p>10 A Sorry. One more time?</p> <p>11 Q Will you agree, as HCMFA's 30(b)(6)</p> <p>12 witness, that the information provided to the</p> <p>13 retail board in October 2020 in response to</p> <p>14 Question Number 2 was taken directly from HCMFA's</p> <p>15 financial statements for the period ending</p> <p>16 June 30th, 2020?</p> <p>17 A Yeah. The unaudited financials, yes.</p> <p>18 Q Okay. And so – so as HCMFA's 30(b)(6)</p> <p>19 witness, you will agree that the \$12,286,000</p> <p>20 figure that was included in the former response to</p> <p>21 the retail board was obtained from HCMFA's</p> <p>22 unaudited financial statements for the period</p> <p>23 ending June 30th, 2020; correct?</p> <p>24 A It appears that way.</p> <p>25 And I – I think – and, again, we're</p>
<p style="text-align: right;">Page 96</p> <p>1 Dustin Norris</p> <p>2 looking at a draft answer here. I don't have the</p> <p>3 final answer. But it looks as work product that</p> <p>4 she's pulling numbers from the unaudited balance</p> <p>5 sheet and plugging them in here.</p> <p>6 Q Okay. And we can look at the final if you</p> <p>7 want, but that \$12,286,000 number that was due to</p> <p>8 HCMLP as of June 30th 2020, that's the exact</p> <p>9 figure that was given to the retail board in the</p> <p>10 final report; correct?</p> <p>11 A "Final report," meaning the final memo –</p> <p>12 final memos?</p> <p>13 Q Yes.</p> <p>14 A Yes. Yes, I believe so.</p> <p>15 Q Okay.</p> <p>16 MR. MORRIS: Can you scroll back up</p> <p>17 to the last email?</p> <p>18 BY MR. MORRIS:</p> <p>19 Q So this is Mr. Waterhouse's response to</p> <p>20 Ms. Thedford. And, again, Mr. Waterhouse is</p> <p>21 Highland's CFO and the advisers' treasurer;</p> <p>22 correct?</p> <p>23 A Correct.</p> <p>24 Q And at this time, Ms. Thedford is an</p> <p>25 attorney at Highland, but she also serves as the</p>	<p style="text-align: right;">Page 97</p> <p>1 Dustin Norris</p> <p>2 secretary for the advisers; correct?</p> <p>3 A That's correct.</p> <p>4 Q And you are the executive vice president</p> <p>5 for the advisers; correct?</p> <p>6 A As of this date, yes.</p> <p>7 Q And you had no position with Highland;</p> <p>8 correct?</p> <p>9 A At this time?</p> <p>10 Q Correct.</p> <p>11 A No position with Highland, no.</p> <p>12 Q Okay. How about Mr. Post? Had he</p> <p>13 transitioned from Highland to the advisers as of</p> <p>14 October 6th?</p> <p>15 A I don't believe so.</p> <p>16 Q Okay. It happened in October, though;</p> <p>17 right?</p> <p>18 A I – I don't know.</p> <p>19 Q Okay.</p> <p>20 A Late October/November. It was late in the</p> <p>21 year.</p> <p>22 Q Okay. And do you know if anybody ever</p> <p>23 told Mr. Waterhouse in October 2020 that there was</p> <p>24 any aspect of his email that was incorrect?</p> <p>25 A Not at that time, no, that I'm – not that</p>



<p style="text-align: right;">Page 98</p> <p>1 Dustin Norris</p> <p>2 I'm aware of.</p> <p>3 Q Okay.</p> <p>4 A And – and would we have reason to doubt</p> <p>5 him? This – he was the source of the</p> <p>6 information.</p> <p>7 Q Okay. And do you see that the last</p> <p>8 sentence of his email actually refers to the last</p> <p>9 sentence of Response Number 2 that was given to</p> <p>10 the retail board later in October 2020?</p> <p>11 A I do.</p> <p>12 Q Did you ever ask Mr. Waterhouse anything</p> <p>13 about that last sentence?</p> <p>14 A I don't believe so.</p> <p>15 Q Do you see that he says, quote: "The</p> <p>16 response should include, as I covered in the board</p> <p>17 meeting, that both entities have the full faith</p> <p>18 and backing from Jim Dondero, and to my knowledge</p> <p>19 that hasn't changed"?</p> <p>20 Do you see that?</p> <p>21 A I do.</p> <p>22 Q Do you know what board meeting he's</p> <p>23 referring to?</p> <p>24 A "The response should include, as I covered</p> <p>25 in the board meeting, that both entities have a</p>	<p style="text-align: right;">Page 99</p> <p>1 Dustin Norris</p> <p>2 full faith and backing."</p> <p>3 So I don't know the exact board</p> <p>4 meeting. However, we do have an August board</p> <p>5 meeting related to 15(c). There's typically an</p> <p>6 in-person or telephonic meeting in August, and</p> <p>7 then there's a September board meeting that is</p> <p>8 devoted almost exclusively to the 15(c) process.</p> <p>9 And after that, there is follow-up</p> <p>10 meetings – multiple sometimes, particularly in</p> <p>11 2020 during the bankruptcy proceedings that –</p> <p>12 where the board was getting comfortable. So it</p> <p>13 would have been one of those meetings, but I don't</p> <p>14 know which one.</p> <p>15 Q And – and did you personally participate</p> <p>16 in a board meeting where Mr. Waterhouse covered</p> <p>17 the topic of the advisers having the full faith</p> <p>18 and backing from Mr. Dondero?</p> <p>19 A I – I probably would have been in most or</p> <p>20 all of those board meetings, but I don't remember</p> <p>21 that specifically.</p> <p>22 Q Okay. Do you know – do you know whether</p> <p>23 anybody who's copied on this email ever questioned</p> <p>24 any aspect of the last sentence of</p> <p>25 Mr. Waterhouse's email at any time prior to the</p>
<p style="text-align: right;">Page 100</p> <p>1 Dustin Norris</p> <p>2 sending of the final memo on October 23rd?</p> <p>3 A Not that I'm aware of.</p> <p>4 Q You didn't; isn't that right?</p> <p>5 A I don't know that I read it, but I didn't</p> <p>6 question it. If I – I either didn't read it or I</p> <p>7 didn't question it.</p> <p>8 Q Okay. So you have no recollection of ever</p> <p>9 asking Mr. Waterhouse what he meant by the last</p> <p>10 sentence of this email; correct?</p> <p>11 A No, I have no recollection.</p> <p>12 Q And you have no recollection of any</p> <p>13 recipient of this email asking Mr. Waterhouse what</p> <p>14 he meant by that last sentence; correct?</p> <p>15 A I don't remember.</p> <p>16 Q And you never told Mr. Waterhouse that you</p> <p>17 had no knowledge of him having covered this issue</p> <p>18 before the board?</p> <p>19 A You're wondering if I ever told him I had</p> <p>20 no knowledge?</p> <p>21 Q Yeah.</p> <p>22 A No, I never talked to him about that.</p> <p>23 Q And to the best of your knowledge, no</p> <p>24 recipient of this email ever challenged</p> <p>25 Mr. Waterhouse's statement in this last sentence;</p>	<p style="text-align: right;">Page 101</p> <p>1 Dustin Norris</p> <p>2 correct?</p> <p>3 A I don't know what the conversations were</p> <p>4 had between the others, but I have no knowledge of</p> <p>5 that.</p> <p>6 Q Okay.</p> <p>7 A And – and you've got – sorry. Go ahead.</p> <p>8 Q This email string is – is an email string</p> <p>9 devoted for the sole purpose of addressing</p> <p>10 questions posed by the retail board in connection</p> <p>11 with the 15(c) review; correct?</p> <p>12 A I believe so.</p> <p>13 Q Okay. Have you ever seen HCMFA's</p> <p>14 unaudited financial statements for June 30th,</p> <p>15 2020?</p> <p>16 A Yes.</p> <p>17 Q And do you know if those audited –</p> <p>18 unaudited financial statements included the</p> <p>19 amounts due and payable under the notes?</p> <p>20 A I – I think that – I – I don't</p> <p>21 remember, but I think our position is it's</p> <p>22 unclear, because the amounts don't agree to</p> <p>23 the – again, we have prior notes, we have these</p> <p>24 notes. The amounts don't line up.</p> <p>25 So it's – it's – the underlying</p>

<p style="text-align: right;">Page 102</p> <p>1 Dustin Norris</p> <p>2 backing is not provided. There's no footnotes.</p> <p>3 It's just a number that says due to HCMLP.</p> <p>4 Q Do you know – do you know – do you have</p> <p>5 any recollection as to the totality of HCMFA's</p> <p>6 liabilities as of June 30th, 2020?</p> <p>7 A Including this note? Or just this note?</p> <p>8 Q All – all liabilities. What's the bottom</p> <p>9 of the balance sheet?</p> <p>10 A I don't know. Do you have it? Do you</p> <p>11 want to pull it up?</p> <p>12 Q I don't.</p> <p>13 A Yeah, I don't remember.</p> <p>14 MR. RUKAVINA: Hey, John, it's</p> <p>15 approaching 12:15. Just whenever, you</p> <p>16 know –</p> <p>17 MR. MORRIS: Yeah. You know what?</p> <p>18 I was just about to change topics, so this</p> <p>19 is a good time.</p> <p>20 MR. RUKAVINA: Okay.</p> <p>21 MR. MORRIS: Why don't we stop</p> <p>22 here, and we'll come back at the top of</p> <p>23 the hour.</p> <p>24 MR. RUKAVINA: Excellent. Thank</p> <p>25 you.</p>	<p style="text-align: right;">Page 103</p> <p>1 Dustin Norris</p> <p>2 (Recess from 12:11 p.m. to 1:06 p.m. CST)</p> <p>3 BY MR. MORRIS:</p> <p>4 Q Mr. Norris, Topic Number 9 relates to</p> <p>5 consent fees.</p> <p>6 Do you understand that?</p> <p>7 A I do.</p> <p>8 Q Do you have an understanding of what a</p> <p>9 "consent fee" is?</p> <p>10 A I do.</p> <p>11 Q Did you do anything to prepare for this</p> <p>12 particular topic?</p> <p>13 A I did.</p> <p>14 Q What did you do to prepare for this topic?</p> <p>15 A I discussed the consent fee with</p> <p>16 Mr. Dondero, with Mr. Rukavina, and with</p> <p>17 Mr. Sauter.</p> <p>18 Q Okay. Mr. Sauter has no personal</p> <p>19 knowledge of any consent fee that was paid in the</p> <p>20 spring of 2019; correct?</p> <p>21 A No.</p> <p>22 Q Okay. What's your understanding of what a</p> <p>23 "consent fee" is?</p> <p>24 A Generally or the specific consent fee</p> <p>25 in – that –</p>
<p style="text-align: right;">Page 104</p> <p>1 Dustin Norris</p> <p>2 Q Let's start generally.</p> <p>3 A Yeah. So a "consent fee" is a fee paid to</p> <p>4 a – paid to someone who's agreeing to amend terms</p> <p>5 or change the structure of the – of a document or</p> <p>6 a loan. In – in bank loan world, or loan world,</p> <p>7 if you are going to amend or extend or change the</p> <p>8 terms, typically there was a consent fee paid to</p> <p>9 those willing to consent.</p> <p>10 Those that have voted or consented</p> <p>11 receive a fee.</p> <p>12 Q Okay. And did HCMFA pay any consent fees</p> <p>13 in or around April or May 2019?</p> <p>14 A It began to pay consent fees in May</p> <p>15 of 2019, I believe.</p> <p>16 Q Okay. Are you looking at something as you</p> <p>17 prepare your answer?</p> <p>18 A Yeah. I'm looking at Topic Number 9 that</p> <p>19 says consent fee in April or May 2019.</p> <p>20 Q Okay. Thank you so much.</p> <p>21 And – and I think you testified that</p> <p>22 they began paying consent fees at around that</p> <p>23 time?</p> <p>24 A That's right.</p> <p>25 Q What do you mean by that?</p>	<p style="text-align: right;">Page 105</p> <p>1 Dustin Norris</p> <p>2 A Yeah. So the consent fee was related to</p> <p>3 the global allocation fund that converted from an</p> <p>4 open-end fund to a closed-end fund, and there was</p> <p>5 a 3 percent fee that would be paid to investors</p> <p>6 that, one, consented to the conversion from an</p> <p>7 open-end fund to a closed-end fund, but also held</p> <p>8 their investment through the conversion.</p> <p>9 The conversion was finalized in</p> <p>10 February of 2019, and the consent fee was an</p> <p>11 operational challenge because you had to determine</p> <p>12 who the investors were that voted yes and that</p> <p>13 held on to the conversion.</p> <p>14 So with that, the – the amounts that</p> <p>15 were paid, there was an operational challenge to</p> <p>16 determine who – who needed to be paid, and so</p> <p>17 they were deposited and then paid out over a</p> <p>18 couple-month period.</p> <p>19 Q And who made the decision to pay the</p> <p>20 consent fee?</p> <p>21 A So the consent fee was a collaborative</p> <p>22 decision of senior management. Jim Dondero and</p> <p>23 myself were involved in the decision, the</p> <p>24 discussion to – and it was a novel idea in terms</p> <p>25 of converting from an open-end fund to a</p>

<p style="text-align: right;">Page 106</p> <p>1 Dustin Norris</p> <p>2 closed-end fund, and it was submitted to</p> <p>3 investors. It went through SEC review as a proxy</p> <p>4 statement, and it went out to shareholders who</p> <p>5 needed to vote for the proposal.</p> <p>6 Q And who paid the consent fee? HCMFA?</p> <p>7 A My understanding is HCMFA as the adviser</p> <p>8 of the global allocation fund paid the consent fee</p> <p>9 to investors.</p> <p>10 Q And whose idea was it to seek consent to</p> <p>11 change from an open fund to a closed-end fund?</p> <p>12 A I – I would say it was collaborative of</p> <p>13 senior management. Jim Dondero, myself, legal</p> <p>14 compliance was involved. It was, you know, Mark</p> <p>15 Okada, who was a partner at the time. There was a</p> <p>16 lot of discussion involved.</p> <p>17 Q And when the decision was made to seek</p> <p>18 consent to change from an open-end fund to a</p> <p>19 closed-end fund, did HCMFA understand that there</p> <p>20 would be costs, fees, and expenses associated with</p> <p>21 that decision?</p> <p>22 A Being cost fees as in the consent fee?</p> <p>23 Q Correct.</p> <p>24 A Yes.</p> <p>25 Q And did it undertake any analysis to</p>	<p style="text-align: right;">Page 107</p> <p>1 Dustin Norris</p> <p>2 determine what the likely total fee would be?</p> <p>3 A Yeah. I'm sure they did.</p> <p>4 Q Do you know what the total fee</p> <p>5 paid – what the total consent fee paid was?</p> <p>6 A I don't have the exact amount, but it was</p> <p>7 over \$5 million.</p> <p>8 Q Okay. And over what period of time were</p> <p>9 the consent fees paid?</p> <p>10 A I know they were paid in May and June, and</p> <p>11 there may be a portion that were paid thereafter,</p> <p>12 but at least May and June of 2019. There were</p> <p>13 certain broker-dealers that reported later, and</p> <p>14 when those were reported and verified, they were</p> <p>15 paid out. I don't remember the final date of the</p> <p>16 last distribution.</p> <p>17 Q Okay. And forgive me. It's not my</p> <p>18 business. But were the consent fees paid to the</p> <p>19 fund's shareholders?</p> <p>20 A They were paid to the shareholders.</p> <p>21 That's correct.</p> <p>22 Q Okay.</p> <p>23 A That's consented. The shareholders had to</p> <p>24 vote, and they had to be a shareholder on</p> <p>25 conversion date.</p>
<p style="text-align: right;">Page 108</p> <p>1 Dustin Norris</p> <p>2 Q Okay. And the decision to seek and obtain</p> <p>3 consent, was that a voluntary decision by HCMFA?</p> <p>4 A To seek consent to move to a closed-end</p> <p>5 fund?</p> <p>6 Q Yes. That's not something that any</p> <p>7 regulator required, was it?</p> <p>8 A No.</p> <p>9 Q It's not something that any rule or</p> <p>10 anybody mandated; correct?</p> <p>11 A Not that I believe.</p> <p>12 Q Okay. How did HCMFA fund the payment of</p> <p>13 the total consent fee of over \$5 million?</p> <p>14 A Yeah, from cash that it had on the balance</p> <p>15 sheet.</p> <p>16 Q And where did it get the cash that was on</p> <p>17 the balance sheet?</p> <p>18 A The cash came from the transaction that we</p> <p>19 discussed earlier – and you showed the capital</p> <p>20 coming in from Highland – which was compensation</p> <p>21 for the NAV error.</p> <p>22 Q So it used the money that it received in</p> <p>23 the transfers that we talked about to pay the</p> <p>24 consent fee. Do I have that right? Or at least</p> <p>25 some of it?</p>	<p style="text-align: right;">Page 109</p> <p>1 Dustin Norris</p> <p>2 A Yes.</p> <p>3 Q And, in fact, it used approximately</p> <p>4 \$5 million of the moneys paid in May 2019 to pay</p> <p>5 the consent fee of approximately \$5 million; is</p> <p>6 that fair?</p> <p>7 A At least \$5 million.</p> <p>8 Q Okay. Do you know the exact number?</p> <p>9 A Of the consent fee?</p> <p>10 Q Withdrawn.</p> <p>11 Do you have a better or more precise</p> <p>12 estimate of the total consent fee other than</p> <p>13 \$5 million?</p> <p>14 A It was over \$5 million. I don't remember</p> <p>15 the exact amount, whether it was 5.6 or 5.2 –</p> <p>16 Q All right.</p> <p>17 A – because it was paid over time.</p> <p>18 Q Let's talk about the TerreStar valuation</p> <p>19 issue for a few minutes, if we can.</p> <p>20 A Okay.</p> <p>21 Q Just generally, in 2018/2019, HCMFA spent</p> <p>22 a fair amount of time addressing the consequences</p> <p>23 of a valuation error concerning TerreStar. Do I</p> <p>24 have that right?</p> <p>25 A There was a lot in there, but there was,</p>

<p style="text-align: right;">Page 110</p> <p>1 Dustin Norris</p> <p>2 during that time, a lot of discussions with</p> <p>3 TerreStar over the concerns of a valuation error</p> <p>4 in 2018 and '19.</p> <p>5 Q And did it ultimately turn out that there</p> <p>6 was a valuation error involving TerreStar?</p> <p>7 A There was.</p> <p>8 Q Okay. And had HCMFA retained Houlihan</p> <p>9 Lokey in connection with doing the TerreStar</p> <p>10 valuation?</p> <p>11 A Houlihan Lokey was involved in the</p> <p>12 valuation, yes.</p> <p>13 Q And who retained Houlihan Lokey?</p> <p>14 A I don't know.</p> <p>15 Q As you sit here right now, you can't tell</p> <p>16 me who retained Houlihan Lokey?</p> <p>17 A I don't know if it was HCMLP or HCMFA</p> <p>18 or – I don't know.</p> <p>19 Q Okay. Are you familiar with the firm</p> <p>20 Houlihan Lokey?</p> <p>21 A I am.</p> <p>22 Q And do you know what services they</p> <p>23 provided in connection with the TerreStar</p> <p>24 valuation?</p> <p>25 A I do.</p>	<p style="text-align: right;">Page 111</p> <p>1 Dustin Norris</p> <p>2 Q Can you describe for me the services that</p> <p>3 were provided by Houlihan Lokey in connection with</p> <p>4 the TerreStar –</p> <p>5 A And I would say I do generally. I was not</p> <p>6 involved in the individual details. That was all</p> <p>7 the HCMLP employees.</p> <p>8 So all of the Highland employees that</p> <p>9 were involved in the shared services agreement,</p> <p>10 the valuation committee, valuation services were</p> <p>11 the responsibility of HCMLP. Key inputs were</p> <p>12 provided by HCMLP. Key estimates and</p> <p>13 interpretations to Houlihan, and they used their</p> <p>14 models to calculate a valuation that was then</p> <p>15 approved by the valuation committee at HCMLP.</p> <p>16 And so that's my general understanding</p> <p>17 of the valuation process.</p> <p>18 Q Do you know how much Houlihan Lokey was</p> <p>19 paid for its work?</p> <p>20 A I don't.</p> <p>21 Q Do you know if there's an engagement</p> <p>22 letter pursuant to which Houlihan Lokey provided</p> <p>23 these services?</p> <p>24 A I'm not aware.</p> <p>25 Q Would you dispute that HCMFA is the entity</p>
<p style="text-align: right;">Page 112</p> <p>1 Dustin Norris</p> <p>2 that retained Houlihan Lokey?</p> <p>3 A I don't know.</p> <p>4 Q Would you agree that Houlihan Lokey is</p> <p>5 fairly described as an independent third-party</p> <p>6 valuation consultant?</p> <p>7 A Yes, generally.</p> <p>8 Q Okay. And do you know when Houlihan Lokey</p> <p>9 was retained?</p> <p>10 A I don't.</p> <p>11 Q Houlihan Lokey's retention was approved by</p> <p>12 the retail board, wasn't it?</p> <p>13 A I'm not sure.</p> <p>14 Q Have you ever seen any of the work product</p> <p>15 of Houlihan Lokey in connection with the TerreStar</p> <p>16 valuation?</p> <p>17 A Yeah. I remember seeing the valuation</p> <p>18 model.</p> <p>19 Q So Houlihan Lokey did prepare the</p> <p>20 valuation model that is the subject of the</p> <p>21 TerreStar valuation issue; is that fair?</p> <p>22 A Working very closely with the HCMLP</p> <p>23 employees with the inputs, yes.</p> <p>24 Q Did HCMFA rely on the Houlihan Lokey</p> <p>25 valuation model?</p>	<p style="text-align: right;">Page 113</p> <p>1 Dustin Norris</p> <p>2 A I'm not sure.</p> <p>3 Q Does HCMFA contend that Houlihan Lokey</p> <p>4 made any mistakes in connection with its valuation</p> <p>5 services?</p> <p>6 A I'm not sure.</p> <p>7 Q Does HCMFA have a position as to whether</p> <p>8 or not Houlihan Lokey made any mistakes in any of</p> <p>9 the services that it performed in connection with</p> <p>10 the TerreStar valuation?</p> <p>11 A I think they don't have details and would</p> <p>12 retain their rights to understand what their role</p> <p>13 and – sorry. What was the original question?</p> <p>14 Q Just whether HCMFA has a position as to</p> <p>15 whether or not Houlihan Lokey made any mistakes in</p> <p>16 the work that it did in connection with the</p> <p>17 TerreStar valuation?</p> <p>18 A Yeah. I think they're retaining their</p> <p>19 rights to understand that better.</p> <p>20 Q Is there any agreement with Houlihan Lokey</p> <p>21 that would give HCMFA the time to do that? Is</p> <p>22 there a tolling agreement or anything like that?</p> <p>23 A Not that I'm aware of.</p> <p>24 Q Is HCMFA undertaking any analysis to</p> <p>25 determine whether or not Houlihan Lokey made any</p>

<p style="text-align: right;">Page 114</p> <p>1 Dustin Norris</p> <p>2 mistakes in connection with the work that it did</p> <p>3 on the TerreStar valuation?</p> <p>4 A Sorry. One more time.</p> <p>5 Q Is HCMFA undertaking any analysis or</p> <p>6 investigation to try to determine whether Houlihan</p> <p>7 Lokey made any mistakes?</p> <p>8 A There are – I don't know. I don't know.</p> <p>9 Q You have no knowledge, as you sit here</p> <p>10 today, as to whether HCMFA is undertaking any</p> <p>11 analysis or investigation to try to determine</p> <p>12 whether Houlihan Lokey did anything wrong in</p> <p>13 connection with its valuation services; correct?</p> <p>14 A And I wasn't prepared – I don't think</p> <p>15 this is one of the topics – you know, Houlihan</p> <p>16 Lokey's, you know, involvement, and so I wasn't</p> <p>17 prepared to answer that one.</p> <p>18 Q Okay. Well, the defense – HCMFA's</p> <p>19 defense is that Highland is responsible for the</p> <p>20 TerreStar valuation issue; correct?</p> <p>21 A Yes.</p> <p>22 Q And there's no question that Houlihan</p> <p>23 Lokey provided services in connection with that</p> <p>24 valuation; correct?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 115</p> <p>1 Dustin Norris</p> <p>2 Q But HCMFA has not undertaken any analysis</p> <p>3 or investigation, to the best of your knowledge,</p> <p>4 to try to determine if Houlihan Lokey was the</p> <p>5 responsible party; fair?</p> <p>6 A We don't know if there is a contract or</p> <p>7 not. At this point, we're talking about the</p> <p>8 defense of Highland's responsibility. There's no</p> <p>9 question they were responsible for the valuations.</p> <p>10 They were outsource provider of the valuation</p> <p>11 committee. Every individual working and</p> <p>12 coordinating with Houlihan Lokey was an HCMFA</p> <p>13 employee. All the data and information that was</p> <p>14 provided to them came from HCMLP. There's no</p> <p>15 question that Highland was responsible for the NAV</p> <p>16 error. No one ever questioned that. That was</p> <p>17 always known. It was all the employees that were</p> <p>18 involved.</p> <p>19 MR. RUKAVINA: John, I'll just</p> <p>20 reiterate that we did not understand your</p> <p>21 topics to include Houlihan Lokey. If you</p> <p>22 need more information about that or if we</p> <p>23 need to have a supplemental deposition,</p> <p>24 that's fine. But this is just not</p> <p>25 something that we reasonably anticipated</p>
<p style="text-align: right;">Page 116</p> <p>1 Dustin Norris</p> <p>2 you asking about.</p> <p>3 MR. MORRIS: I think it's – I</p> <p>4 think I have the answer that I need and</p> <p>5 that the executive vice president and</p> <p>6 30(b)(6) witness has no knowledge of any</p> <p>7 investigation or analysis that has been</p> <p>8 undertaken by HCMFA to try to even</p> <p>9 determine whether Houlihan Lokey is at</p> <p>10 fault.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q Do I have that right, Mr. Norris?</p> <p>13 MR. RUKAVINA: Well, I will just</p> <p>14 object that that was not your prior</p> <p>15 question.</p> <p>16 MR. MORRIS: All right. Well,</p> <p>17 that's my question now.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q Is that correct, Mr. Norris?</p> <p>20 A I know there's been discussion with</p> <p>21 counsel.</p> <p>22 MR. RUKAVINA: Well, I will</p> <p>23 represent to you that we have looked for a</p> <p>24 Houlihan Lokey contract and have not been</p> <p>25 able to find one. Otherwise, we would</p>	<p style="text-align: right;">Page 117</p> <p>1 Dustin Norris</p> <p>2 have produced it to you. So if you have</p> <p>3 anything like that, we'd love to see it.</p> <p>4 We do not even know whether we had a</p> <p>5 contract with Houlihan Lokey or not. So</p> <p>6 we'll try to find you information, John.</p> <p>7 We just – we just don't have it.</p> <p>8 MR. MORRIS: We'll get to that in a</p> <p>9 moment.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q Has HCMFA – withdrawn.</p> <p>12 Has HCMFA ever told Houlihan Lokey</p> <p>13 that it believed it made any mistake or error of</p> <p>14 any kind in connection with its work on the</p> <p>15 TerreStar valuation?</p> <p>16 A Again, I – this is not a topic that we</p> <p>17 reviewed, so I don't know.</p> <p>18 Q Okay. You're not aware of anything today;</p> <p>19 correct?</p> <p>20 A Again, the employees working with Houlihan</p> <p>21 Lokey were the HCMLP employees. So I don't know</p> <p>22 if the debtor employees have that conversation,</p> <p>23 but –</p> <p>24 MR. MORRIS: Yeah, I'm going to</p> <p>25 move to strike.</p>



<p style="text-align: right;">Page 118</p> <p>1 Dustin Norris</p> <p>2 BY MR. MORRIS:</p> <p>3 Q And I'm asking about HCMFA.</p> <p>4 Did – has HCMFA ever informed</p> <p>5 Houlihan Lokey that HCMFA believes that Houlihan</p> <p>6 Lokey made a mistake or error in the work that it</p> <p>7 did?</p> <p>8 A There were ongoing discussions extensively</p> <p>9 throughout this with Houlihan Lokey and the debtor</p> <p>10 employees regarding the error and what the causes</p> <p>11 were. It was extensive discussions.</p> <p>12 MR. MORRIS: Okay. Move to strike.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q Has HCMFA ever told Houlihan Lokey that</p> <p>15 HCMFA believes that Houlihan Lokey made a mistake</p> <p>16 or an error in connection with its valuation</p> <p>17 services?</p> <p>18 A It may have, but I'm not aware.</p> <p>19 Q Thank you.</p> <p>20 Are you familiar with the report that</p> <p>21 HCMFA prepared and sent to the Global Allocation</p> <p>22 Fund concerning the TerreStar valuation issues?</p> <p>23 A They sent to the fund?</p> <p>24 Q Uh-huh.</p> <p>25 A What do you mean "they sent to the fund"?</p>	<p style="text-align: right;">Page 119</p> <p>1 Dustin Norris</p> <p>2 Q They sent to the board of the fund?</p> <p>3 A Oh, the board of the fund.</p> <p>4 There were a number of memos and</p> <p>5 presentations. If you have one you want to pull</p> <p>6 up, you can – we can refer to it.</p> <p>7 Q Sure.</p> <p>8 MR. MORRIS: Let's put up what</p> <p>9 we've marked as Exhibit 182.</p> <p>10 (Exhibit 182 tendered.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q And while we're doing that, have you ever</p> <p>13 seen a single document anywhere at any time in</p> <p>14 which any representative of HCMFA took Highland to</p> <p>15 task for the work that it did in connection with</p> <p>16 the TerreStar valuation?</p> <p>17 A "Took them to task"? Define "take them to</p> <p>18 task."</p> <p>19 Q Told them that they were the source and</p> <p>20 cause of the NAV error.</p> <p>21 A The irony of all of the reporting to the</p> <p>22 board, all of the valuation knowledge was from</p> <p>23 HCMLP's employees. We – we outsourced that to</p> <p>24 them. There was – there was no question that</p> <p>25 they were at fault, and that's – every employee</p>
<p style="text-align: right;">Page 120</p> <p>1 Dustin Norris</p> <p>2 involved was an HCMLP employee.</p> <p>3 MR. MORRIS: I move to strike.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q And I'm going to ask you, sir, to listen</p> <p>6 carefully to my question.</p> <p>7 Have you ever seen a document that</p> <p>8 HCMFA sent to Highland in which HCMFA accused</p> <p>9 Highland of being the cause of the NAV error?</p> <p>10 A I have not.</p> <p>11 Q Thank you.</p> <p>12 Do you see the document that's on the</p> <p>13 screen?</p> <p>14 A I do.</p> <p>15 Q Before I get to that, so the NAV error</p> <p>16 occurred sometime prior to May 2019; correct?</p> <p>17 A Beginning – I don't know the specific</p> <p>18 dates. I believe it began in May of 2019 –</p> <p>19 sorry. May 2019 –</p> <p>20 Q That's when it ended; right?</p> <p>21 A What's that?</p> <p>22 Q That's when it ended; right? That's –</p> <p>23 A Yeah, it was before May 2019.</p> <p>24 Q Okay. So during the entire time that the</p> <p>25 TerreStar NAV error was being discussed and</p>	<p style="text-align: right;">Page 121</p> <p>1 Dustin Norris</p> <p>2 analyzed and debated and communications with the</p> <p>3 SEC, during that entire period, Jim Dondero was in</p> <p>4 control of both HCMFA and Highland; correct?</p> <p>5 A Yes, I believe so.</p> <p>6 Q Okay. Can you identify any employee of</p> <p>7 Highland who was fired as a result of any of the</p> <p>8 mistakes that were made in connection with the</p> <p>9 TerreStar valuation?</p> <p>10 A No.</p> <p>11 Q Can you identify –</p> <p>12 A Not that I can remember.</p> <p>13 Q Can you identify any steps that</p> <p>14 Mr. Dondero took against any employee who was</p> <p>15 allegedly involved in the NAV error?</p> <p>16 A That would have been an HCMLP matter. I</p> <p>17 don't have any knowledge of HCMLP's hiring or</p> <p>18 firing practices.</p> <p>19 Q Okay. So at no time did anybody ever tell</p> <p>20 you that any disciplinary measures were imposed</p> <p>21 upon any Highland employee as a result of the NAV</p> <p>22 error that Highland allegedly caused; correct?</p> <p>23 A Any firing practice? Is that what you</p> <p>24 said?</p> <p>25 Q Disciplinary. Firing. Anything.</p>



<p style="text-align: right;">Page 122</p> <p>1 Dustin Norris</p> <p>2 A There was a remediation process that had</p> <p>3 to go into effect, which was improvement of</p> <p>4 controls, and they maybe even hired additional</p> <p>5 people. But it was – and I don't – I'm not</p> <p>6 aware of any disciplinary, but there could have</p> <p>7 been.</p> <p>8 Q Okay. But that would just be speculation</p> <p>9 on your part; correct?</p> <p>10 A Yeah.</p> <p>11 Q So have you seen the document that's up on</p> <p>12 the screen?</p> <p>13 A I have.</p> <p>14 Q Did you read it before it was sent?</p> <p>15 A I don't think so.</p> <p>16 Q Did anybody – did any officer or employee</p> <p>17 take responsibility for making sure that –</p> <p>18 withdrawn.</p> <p>19 What is this document?</p> <p>20 A It is titled "Resolution of the Funds Net</p> <p>21 Asset Value Error."</p> <p>22 Q And was – is it your understanding that</p> <p>23 the purpose of this document was to enable HCMFA</p> <p>24 to explain to the Global Allocation Fund how the</p> <p>25 resolution of the NAV error was being conducted?</p>	<p style="text-align: right;">Page 123</p> <p>1 Dustin Norris</p> <p>2 A Not to the Global Allocation Fund. This</p> <p>3 is a memo to the board.</p> <p>4 Q Thank you for the clarification.</p> <p>5 Subject to that clarification, is my</p> <p>6 description otherwise correct?</p> <p>7 A I believe so. There had been a number of</p> <p>8 communications with the board, and this is the</p> <p>9 resolution of the whole process, or most of the</p> <p>10 process.</p> <p>11 Q This was a pretty big issue for HCMFA,</p> <p>12 wasn't it?</p> <p>13 A There was a lot of people involved. It</p> <p>14 was – there was a lot of involvement from –</p> <p>15 mostly Highland Capital Management, LP, employees,</p> <p>16 but it was – there was a lot involved.</p> <p>17 Q And who – what outside counsel was</p> <p>18 retained?</p> <p>19 A Adviser counsel is counsel – is – I</p> <p>20 believe it was K&amp;L Gates for HCMFA.</p> <p>21 Q And who was Highland's counsel?</p> <p>22 A I don't know.</p> <p>23 Q Do you know if Highland had counsel?</p> <p>24 A I don't know.</p> <p>25 Q Do you –</p>
<p style="text-align: right;">Page 124</p> <p>1 Dustin Norris</p> <p>2 A I know they had counsel they referred to</p> <p>3 for SEC matters, and I don't know if they utilized</p> <p>4 them here or not. They were all Highland</p> <p>5 employees that worked on this. So I'm sure you</p> <p>6 probably have that in your records.</p> <p>7 Q Sir, can you identify any outside counsel</p> <p>8 that was retained by Highland to advise it in</p> <p>9 connection with the TerreStar valuation issues</p> <p>10 that were the subject of an SEC investigation?</p> <p>11 A I have – I have no knowledge of that.</p> <p>12 Q Okay. Did you see this memo that's up on</p> <p>13 the screen that's been marked as Exhibit 182 prior</p> <p>14 to the time that it was sent?</p> <p>15 A I don't recall.</p> <p>16 Q The NAV error was the subject of an SEC</p> <p>17 investigation; correct?</p> <p>18 A Correct.</p> <p>19 Q Do you know if HCMFA ever told the SEC</p> <p>20 orally, in writing, or otherwise that Highland</p> <p>21 Capital Management, LP, was the cause of the NAV</p> <p>22 error?</p> <p>23 A Not that I'm aware of, but they were</p> <p>24 concerned about the ultimate correction of the NAV</p> <p>25 error. I don't think they were concerned about</p>	<p style="text-align: right;">Page 125</p> <p>1 Dustin Norris</p> <p>2 the responsible party.</p> <p>3 But I would say every single person</p> <p>4 that interacted with the SEC, I believe, were</p> <p>5 HCMLP employees. We can see that on the other</p> <p>6 memo that they have to the SEC following up on a</p> <p>7 call; all HCMLP employees. So whether they told</p> <p>8 them or not, they were all HCMLP employees.</p> <p>9 MR. MORRIS: Okay. Move to strike</p> <p>10 after the very first portion of the answer</p> <p>11 that was responsive.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q Did anybody – did any officer or employee</p> <p>14 of HCMFA ever inform the SEC that Highland Capital</p> <p>15 Management, LP, was the responsible party for the</p> <p>16 NAV error?</p> <p>17 A Specifically, not that I'm aware of.</p> <p>18 Q Okay. Was any HCMFA officer or employee</p> <p>19 responsible for making sure that the memorandum up</p> <p>20 on the screen that's been marked as 182 was true</p> <p>21 and accurate before it was sent to the board of</p> <p>22 the Highland Global Allocation Fund?</p> <p>23 A I don't know that there is a – there's a</p> <p>24 specific requirement of an officer to verify the</p> <p>25 accuracy.</p>

<p style="text-align: right;">Page 126</p> <p>1 Dustin Norris</p> <p>2 Q Okay. But my question was a little bit</p> <p>3 broader, and that was whether there was any</p> <p>4 officer or employee who was given the</p> <p>5 responsibility of making sure this document was</p> <p>6 true and accurate before it was sent to the board</p> <p>7 of the GAF.</p> <p>8 A I don't even know who drafted this. It</p> <p>9 would have come from Highland's compliance legal</p> <p>10 and accounting team with all the expertise around</p> <p>11 the NAV error and all of those that were involved.</p> <p>12 Q So did you see this document at or around</p> <p>13 the time it was sent to the GAF board?</p> <p>14 A I probably did.</p> <p>15 Q Do you recall telling anybody at that time</p> <p>16 that you believed there were any errors in the</p> <p>17 document?</p> <p>18 A I think, as I testified before, I</p> <p>19 don't -- I don't remember reading it. But I</p> <p>20 didn't -- I didn't say there were errors in the</p> <p>21 document, no.</p> <p>22 Q Prior to the answer date of March 1st,</p> <p>23 2021, did anybody acting on behalf of HCMFA ever</p> <p>24 tell anybody in the world at any time that there</p> <p>25 was any error in this memorandum?</p>	<p style="text-align: right;">Page 127</p> <p>1 Dustin Norris</p> <p>2 A Not that I'm aware of.</p> <p>3 Q Did HCMFA send this memorandum --</p> <p>4 withdrawn.</p> <p>5 Did HCMFA intend this -- withdrawn.</p> <p>6 Did HCMFA expect the GAF board to rely</p> <p>7 on this memorandum?</p> <p>8 A I don't know what the intention was.</p> <p>9 Q You don't know what HCMFA's intention was</p> <p>10 in sending this memorandum?</p> <p>11 A If it's addressed to the board, it could</p> <p>12 be to educate. But I'm sure that the board</p> <p>13 would -- would rely on or expect that that memo</p> <p>14 would be accurate.</p> <p>15 Q Okay. And this is dated after all of the</p> <p>16 payments have been made that we've been talking</p> <p>17 about, the May 2nd and the May 3rd payments;</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q Take a look at the second paragraph.</p> <p>21 A Yup.</p> <p>22 Q Do you see the first sentence refers to</p> <p>23 two initial determinations that were made by the</p> <p>24 adviser and Houlihan Lokey?</p> <p>25 A Sorry. Which part? Just the first</p>
<p style="text-align: right;">Page 128</p> <p>1 Dustin Norris</p> <p>2 sentence of the second paragraph?</p> <p>3 Q Yeah. First of all, do you see that the</p> <p>4 second paragraph refers to the adviser and</p> <p>5 Houlihan Lokey?</p> <p>6 A It does.</p> <p>7 Q And do you see that the reference to</p> <p>8 Houlihan Lokey includes a reference to Houlihan</p> <p>9 Lokey having been approved by the board?</p> <p>10 A Yes.</p> <p>11 Q And do you understand that that means the</p> <p>12 board of GAF?</p> <p>13 A Yes.</p> <p>14 Q Does that refresh your recollection that</p> <p>15 the GAF board approved of the retention of</p> <p>16 Houlihan Lokey as an independent third-party</p> <p>17 expert valuation consultant?</p> <p>18 A It doesn't refresh my recollection, but it</p> <p>19 says it there. I don't know that I have a</p> <p>20 document saying they -- I haven't seen the</p> <p>21 approval, the agreement.</p> <p>22 Q But you don't dispute that this memo was</p> <p>23 sent to the GAF board on or about May 28th, 2019;</p> <p>24 correct?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 129</p> <p>1 Dustin Norris</p> <p>2 Q Okay. And HCMFA told the GAF board at</p> <p>3 that time that HCMFA and Houlihan Lokey, quote,</p> <p>4 "initially determined that the March transactions</p> <p>5 were non-orderly and should be given zero</p> <p>6 weighting for purposes of fair value."</p> <p>7 Is that correct?</p> <p>8 A The HCMLP, as part of the valuation -- or</p> <p>9 as the outsource valuation provider, were the</p> <p>10 employees that made that determination. The</p> <p>11 adviser ultimately has the responsibility, but it</p> <p>12 was outsourced. And those were HCMLP employees,</p> <p>13 along with Houlihan Lokey, that determined the</p> <p>14 March transactions were non-orderly.</p> <p>15 MR. MORRIS: I'm going to move to</p> <p>16 strike.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q And I'm going to ask you to listen</p> <p>19 carefully to my question.</p> <p>20 I'm asking you what HCMFA told the GAF</p> <p>21 board. Did HCMFA tell the GAF board on May 28th,</p> <p>22 2019, that HCMFA and Houlihan Lokey, quote,</p> <p>23 "initially determined that the March transactions</p> <p>24 were non-orderly and should be given zero</p> <p>25 weighting for purposes of determining fair value."</p>

<p style="text-align: right;">Page 130</p> <p>1 Dustin Norris</p> <p>2 Is that correct?</p> <p>3 A The – in the memo, it says that on this</p> <p>4 date, there were many other conversations probably</p> <p>5 around this date and on this date discussing the</p> <p>6 determinations and non-orderly and that it was the</p> <p>7 HCMLP employees, and the board knew that. They</p> <p>8 were very aware that it was the – the valuation</p> <p>9 control environment of HCMLP that determined these</p> <p>10 were non-orderly transactions.</p> <p>11 Q So this – so this report is inaccurate,</p> <p>12 according to you?</p> <p>13 A No. There's – there's just – your</p> <p>14 question was did they tell the board. There is a</p> <p>15 lot that we told the board outside of this memo.</p> <p>16 This memo does say advised from Houlihan Lokey.</p> <p>17 The adviser is ultimately responsible. But there</p> <p>18 was a lot of communication with the board –</p> <p>19 Q Okay.</p> <p>20 A – around this, that they knew exactly who</p> <p>21 was responsible for valuation as the board</p> <p>22 determining that these were market transactions</p> <p>23 and orderly or non-orderly.</p> <p>24 Q Okay. I want to focus on this memo,</p> <p>25 because this is the one that I have. And you'll</p>	<p style="text-align: right;">Page 131</p> <p>1 Dustin Norris</p> <p>2 agree with me that there's no reference to</p> <p>3 Highland Capital Management, LP, anywhere in this</p> <p>4 report; correct?</p> <p>5 A No, there's not, but the board knew that</p> <p>6 HCMLP was preparing the valuations.</p> <p>7 MR. MORRIS: All right. I move to</p> <p>8 strike after the word "no."</p> <p>9 BY MR. MORRIS:</p> <p>10 Q And it was the determination concerning</p> <p>11 whether or not it was orderly or non-orderly, and</p> <p>12 whether or not to use zero weighting that were the</p> <p>13 two causes of the NAV error; correct?</p> <p>14 A Those were key portions.</p> <p>15 Q In the last sentence, in fact, that's the</p> <p>16 only portions; isn't that fair?</p> <p>17 A "Initially determined" – well, it doesn't</p> <p>18 say that there's not other factors. They're the</p> <p>19 only ones mentioned.</p> <p>20 Q Let me – let me – let me read the last</p> <p>21 sentence.</p> <p>22 Quote: "The orderly determination and</p> <p>23 adoption of the weighted fair value methodology</p> <p>24 resulted in NAV errors in the fund," and that's</p> <p>25 what it's defining as the NAV error.</p>
<p style="text-align: right;">Page 132</p> <p>1 Dustin Norris</p> <p>2 Have I read that correctly?</p> <p>3 A You did.</p> <p>4 Q And so would you agree with me, as HCMFA's</p> <p>5 30(b)(6) witness, that on May 28th, 2019, HCMFA</p> <p>6 told the GAF board that the two causes of the NAV</p> <p>7 error were the orderly determination and the</p> <p>8 adoption of the weighted fair value methodology –</p> <p>9 fair value – fair valuation methodology?</p> <p>10 A Those were – it doesn't say those are</p> <p>11 exclusively the only factors, but those are</p> <p>12 mentioned here.</p> <p>13 Q It says those two factors resulted in the</p> <p>14 NAV error; correct?</p> <p>15 A Those – no, it didn't say "the NAV</p> <p>16 error." It said "in NAV errors."</p> <p>17 Q Which it's defining as the NAV error;</p> <p>18 correct?</p> <p>19 A Defines as "the NAV error."</p> <p>20 Q Okay. Does HCMFA contend that there's</p> <p>21 anything in this paragraph that is inaccurate?</p> <p>22 A Again, I – I don't know that Houlihan</p> <p>23 Lokey was approved by the board, but I don't know</p> <p>24 of any other contention.</p> <p>25 Q Okay. And you don't – and HCMFA doesn't</p>	<p style="text-align: right;">Page 133</p> <p>1 Dustin Norris</p> <p>2 dispute that Houlihan Lokey was approved by the</p> <p>3 board. You're just telling me that, as you sit</p> <p>4 here today, that's the one fact that you've not</p> <p>5 been able to confirm; is that fair?</p> <p>6 A As far as I know, yeah.</p> <p>7 Q Okay. Let's go on to the next paragraph.</p> <p>8 MR. MORRIS: If we could just</p> <p>9 scroll up a little bit.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q I'm going to try and summarize here, but</p> <p>12 if you don't think it's a fair summary, of course</p> <p>13 I would encourage you to let me know.</p> <p>14 Is it fair to say that, as a general</p> <p>15 matter, the next paragraph describes a total loss</p> <p>16 from the NAV error as being approximately</p> <p>17 \$7.5 million?</p> <p>18 A Yeah, including processing costs and</p> <p>19 rebates and offsets, yes.</p> <p>20 Q Right. That's what the parenthetical</p> <p>21 says, a total loss –</p> <p>22 A Yup.</p> <p>23 Q – of approximately \$7.5 million?</p> <p>24 A Correct.</p> <p>25 Q And the next paragraph states that that</p>

<p style="text-align: right;">Page 134</p> <p>1 Dustin Norris</p> <p>2 loss was funded with two payments. Do I have that</p> <p>3 correct in the first sentence?</p> <p>4 A Correct.</p> <p>5 Q Okay. Did HCMFA pay approximately</p> <p>6 \$5.186 million on or around February 15, 2019, in</p> <p>7 connection with the NAV error?</p> <p>8 A I believe so.</p> <p>9 And if we go to the next page, it has</p> <p>10 dates and payments. I think it's represented</p> <p>11 there.</p> <p>12 Q Okay. Where did HCMFA get the money to</p> <p>13 make that payment?</p> <p>14 A A combination of insurance proceeds and</p> <p>15 cash that it had. And, again, that's detailed, I</p> <p>16 believe, on the next page.</p> <p>17 Q HCMFA contends that the \$7.4 million</p> <p>18 transferred by Highland to HCMFA was mistakenly</p> <p>19 recorded as a loan; correct?</p> <p>20 A There's – there's two different amounts</p> <p>21 that we contend were recorded as a note, a</p> <p>22 combined 7.4 million, yes.</p> <p>23 Q Okay. And HCMFA contends that the</p> <p>24 \$7.4 million in payments was not to be a loan, but</p> <p>25 was supposed to be compensation for Highland's</p>	<p style="text-align: right;">Page 135</p> <p>1 Dustin Norris</p> <p>2 negligent valuation services in connection with</p> <p>3 the NAV error; correct?</p> <p>4 A Sorry. One more time.</p> <p>5 Q HCMFA contends that the \$7.4 million in</p> <p>6 payments was supposed to be compensation resulting</p> <p>7 from Highland's negligent valuation services;</p> <p>8 correct?</p> <p>9 A Yes, subject to all of our defenses that</p> <p>10 we've laid out in our pleadings.</p> <p>11 Q Okay. When did HCMFA reach the conclusion</p> <p>12 that Highland was the cause of the NAV error?</p> <p>13 A The – there was never – I don't think</p> <p>14 there was ever a question. It was always known</p> <p>15 that HCMLP employees were the ones creating the</p> <p>16 valuation, overseeing the valuation, working with</p> <p>17 the value – you know, everything that was done</p> <p>18 was outsourced to HCMLP.</p> <p>19 And so it was discussed with the</p> <p>20 board. It was discussed in-depth internally. The</p> <p>21 employees were all HCMLP employees. So I can't</p> <p>22 pinpoint a date, but there – it was a known</p> <p>23 factor that HCMLP was responsible.</p> <p>24 MR. MORRIS: Okay. I move to</p> <p>25 strike.</p>
<p style="text-align: right;">Page 136</p> <p>1 Dustin Norris</p> <p>2 BY MR. MORRIS:</p> <p>3 Q The only thing I'm asking you for is a</p> <p>4 date. And if you don't know, the answer is "I</p> <p>5 don't know." So let me try one more time.</p> <p>6 Do you know when HCMFA first</p> <p>7 determined that Highland was negligent?</p> <p>8 A I don't know the first date.</p> <p>9 Q Do you know if it was in 2018 or 2019?</p> <p>10 A I don't know.</p> <p>11 Q Do you know when the NAV error first –</p> <p>12 was first identified?</p> <p>13 A I believe the NAV error was determined in</p> <p>14 early 2019.</p> <p>15 Q Was it before or after – I mean, the –</p> <p>16 the NAV error must have been identified before</p> <p>17 February 15, 2019; correct?</p> <p>18 A Correct.</p> <p>19 Q Okay.</p> <p>20 A Well, I should say whether there – I</p> <p>21 don't know. I don't remember – we'll have to</p> <p>22 look through the documents – what the actual –</p> <p>23 oh, you're saying before February 15th. Yes,</p> <p>24 that's when the paid insurance proceeds came in.</p> <p>25 So yes.</p>	<p style="text-align: right;">Page 137</p> <p>1 Dustin Norris</p> <p>2 Q No question – no question that HCMFA knew</p> <p>3 before February 15, 2019, that there was a NAV</p> <p>4 error; correct?</p> <p>5 A Correct.</p> <p>6 Q No question that HCMFA knew before</p> <p>7 February 15, 2019, that the NAV error was caused</p> <p>8 by Highland; correct?</p> <p>9 A Yeah. Like I said, it was always known</p> <p>10 that these were Highland employees that were</p> <p>11 outsourced through the valuation, and they were</p> <p>12 the ones at fault.</p> <p>13 Q Okay. Do you know if – if HCMFA ever</p> <p>14 demanded compensation from Highland for any errors</p> <p>15 or mistakes it may have made in connection with</p> <p>16 the TerreStar valuation?</p> <p>17 A Yeah. Mr. Dondero told Frank to make the</p> <p>18 payments to compensate for the NAV error.</p> <p>19 Q And did he do that in his capacity as the</p> <p>20 person in control of HCMFA, or did he do that in</p> <p>21 his capacity as the person in control of Highland?</p> <p>22 A I would imagine it would have been both.</p> <p>23 Further supported, he transferred money – of his</p> <p>24 own money to HCMLP to then pay HCMFA. And so</p> <p>25 he – yes, he was on both sides of it, but he had</p>

<p style="text-align: right;">Page 138</p> <p>1 Dustin Norris</p> <p>2 the authority on both sides to make that decision.</p> <p>3 Q Okay. And so Mr. Dondero reached an</p> <p>4 agreement with himself pursuant to which HCMFA</p> <p>5 demanded and Highland agreed to pay the</p> <p>6 \$7.4 million as a consequence of Highland's</p> <p>7 negligent conduct in the performance of its</p> <p>8 valuation services. Do I have that right?</p> <p>9 A Sounds like there's a legal determination</p> <p>10 there that needs to be made. I --</p> <p>11 Q It's a factual one, I promise.</p> <p>12 A Entering -- whether entering into an</p> <p>13 agreement or not, I -- that seems like a legal</p> <p>14 determination. But maybe ask the question again.</p> <p>15 Q Did somebody on behalf of Highland agree</p> <p>16 to pay HCMFA \$7.4 million in order to compensate</p> <p>17 HCMFA for Highland's negligent services in</p> <p>18 connection with the TerreStar valuation?</p> <p>19 A Yes. Mr. Dondero.</p> <p>20 Q Thank you.</p> <p>21 Is there any document anywhere that</p> <p>22 you have ever seen that reflects Highland's</p> <p>23 agreement to pay \$7.4 million as compensation to</p> <p>24 HCMFA?</p> <p>25 A I haven't seen a settlement agreement or</p>	<p style="text-align: right;">Page 139</p> <p>1 Dustin Norris</p> <p>2 an agreement to that effect, no.</p> <p>3 Q You haven't seen anything; correct?</p> <p>4 A No.</p> <p>5 Q Have you looked?</p> <p>6 A We have. I actually wouldn't be</p> <p>7 surprised -- I would be surprised to see one. And</p> <p>8 it's -- my understanding is -- and the company's</p> <p>9 position is that there doesn't need to be an</p> <p>10 agreement. Right? We --</p> <p>11 Q I'm not asking -- I'm going to interrupt</p> <p>12 you again. I'm not asking you --</p> <p>13 MR. RUKAVINA: Well, John --</p> <p>14 MR. MORRIS: -- anything like that.</p> <p>15 I need him to answer my questions or we're</p> <p>16 going to be here all night.</p> <p>17 MR. RUKAVINA: John, hold on.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q Have you ever -- have you ever seen</p> <p>20 anything --</p> <p>21 MR. RUKAVINA: John, hold on. Hold</p> <p>22 on.</p> <p>23 MR. MORRIS: No, no. Davor,</p> <p>24 please -- please --</p> <p>25 MR. RUKAVINA: John, it is not our</p>
<p style="text-align: right;">Page 140</p> <p>1 Dustin Norris</p> <p>2 position -- it is not -- it is our</p> <p>3 position that there is no settlement</p> <p>4 agreement.</p> <p>5 MR. MORRIS: Thank you very much.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q Is it your position that there is any</p> <p>8 document of any kind that reflects Highland's</p> <p>9 agreement to pay \$7.4 million as compensation?</p> <p>10 A No. Subject to our defenses, but there's</p> <p>11 none.</p> <p>12 Q Did Mr. Dondero tell Mr. Waterhouse that</p> <p>13 the money that he was asking to be transferred</p> <p>14 from Highland to HCMFA be transferred as</p> <p>15 compensation for the NAV error?</p> <p>16 A Our position is that this was compensation</p> <p>17 for the NAV error, and that was discussed.</p> <p>18 Mr. Dondero told Frank. And I believe Frank even</p> <p>19 testified to that, and Mr. Dondero testified to</p> <p>20 that in their depositions.</p> <p>21 Q Okay. Now, you said that the February</p> <p>22 payment of over \$5 million was funded through</p> <p>23 insurance proceeds and cash.</p> <p>24 Do I have that right?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 141</p> <p>1 Dustin Norris</p> <p>2 Q And the cash portion was really just the</p> <p>3 deductible?</p> <p>4 A If you want to go to Page 2, we can look</p> <p>5 at the details.</p> <p>6 Q Sure. Sure.</p> <p>7 A I don't have it all by memory.</p> <p>8 Q That's fair.</p> <p>9 MR. MORRIS: Let's go to the next</p> <p>10 page.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q Looking at this, do the third and fourth</p> <p>13 lines refresh your recollection --</p> <p>14 A Yes.</p> <p>15 Q -- that the February payment was funded</p> <p>16 through insurance proceeds and an insurance</p> <p>17 deductible paid by the adviser?</p> <p>18 A Yes, I believe that's correct.</p> <p>19 Q Okay. And Topic Number 8 on the 30(b)(6)</p> <p>20 notice relates to the insurance claim; right?</p> <p>21 A Uh-huh.</p> <p>22 Q Okay. Did you do anything to familiarize</p> <p>23 yourself with the insurance claim?</p> <p>24 A I did.</p> <p>25 Q And what did you do to familiarize</p>



<p style="text-align: right;">Page 142</p> <p>1 Dustin Norris</p> <p>2 yourself with the insurance claim?</p> <p>3 A I discussed with DC and Davor the</p> <p>4 company's position on the insurance claim.</p> <p>5 Q Okay. I don't want to know what the</p> <p>6 company's position is. I want to know what the</p> <p>7 facts are.</p> <p>8 Did you learn any facts in connection</p> <p>9 with your diligence and your preparation to answer</p> <p>10 topic – questions on Topic Number 8?</p> <p>11 A Yeah. The HCMFA policy was – was – the</p> <p>12 HCMFA – HCMFA had an insurance policy with ICI</p> <p>13 Mutual; and based on the NAV error, the policy</p> <p>14 was – I don't know what the word is – was used</p> <p>15 to seek reimbursement for the NAV error.</p> <p>16 Q Okay. So –</p> <p>17 (Reporter discussion off the record.)</p> <p>18 BY MR. MORRIS:</p> <p>19 Q So did HCMFA file a claim for insurance</p> <p>20 coverage with ICI Mutual in connection with the</p> <p>21 NAV error?</p> <p>22 A The HCMLP employees, I believe, through</p> <p>23 Frank Waterhouse and his team, did that. They –</p> <p>24 they managed the insurance as part of the shared</p> <p>25 services agreement, and they filed with the</p>	<p style="text-align: right;">Page 143</p> <p>1 Dustin Norris</p> <p>2 insurance company –</p> <p>3 Q And – and the filing –</p> <p>4 A – on behalf of HCMFA.</p> <p>5 Q And the filing that was made, was that a</p> <p>6 claim that was made on behalf of HCMFA?</p> <p>7 A I believe so, yes.</p> <p>8 Q And did HCMFA authorize the filing of that</p> <p>9 claim?</p> <p>10 A Our position is that that – that is a</p> <p>11 valid claim from HCMFA.</p> <p>12 Q All right. Did HCMFA authorize the filing</p> <p>13 of the insurance claim?</p> <p>14 A I – I don't know.</p> <p>15 Q Did – has HCMFA ever told anybody at any</p> <p>16 time that the insurance claim was not authorized</p> <p>17 by HCMFA?</p> <p>18 A No.</p> <p>19 Q And HCMFA received almost \$5 million on</p> <p>20 account of the claim; right?</p> <p>21 A Correct.</p> <p>22 Q And HCMFA wanted to recover on its</p> <p>23 insurance claim; correct?</p> <p>24 A Yes.</p> <p>25 Q Did the claim – was the claim made in</p>
<p style="text-align: right;">Page 144</p> <p>1 Dustin Norris</p> <p>2 writing?</p> <p>3 A I believe so.</p> <p>4 Q Have you seen the claim?</p> <p>5 A I don't – I don't recall seeing the</p> <p>6 claim.</p> <p>7 Q In connection with the defense of this</p> <p>8 lawsuit and the preparation, have you made any</p> <p>9 efforts to identify the actual claim that was</p> <p>10 filed on behalf of HCMFA?</p> <p>11 MR. RUKAVINA: Let me interject –</p> <p>12 let – let me interject. And we can talk</p> <p>13 about this offline. We searched for that</p> <p>14 and could not find it. We suspect it</p> <p>15 might be in HCMLP's legal documents that</p> <p>16 we don't have access to, but we have and</p> <p>17 we continue to actively search for the</p> <p>18 claim itself. We have not been able to</p> <p>19 find it.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q Does HCMFA use an insurance broker?</p> <p>22 A I don't believe so for this. I think it's</p> <p>23 directly with ICI Mutual. And it – we – there's</p> <p>24 no broker, but it goes through HCMLP's employees.</p> <p>25 Frank Waterhouse would have been the one probably</p>	<p style="text-align: right;">Page 145</p> <p>1 Dustin Norris</p> <p>2 interacting with ICI Mutual.</p> <p>3 Q HCMFA and HCMLP broke up at the end of</p> <p>4 February; is that fair?</p> <p>5 A That's correct.</p> <p>6 Q At any time since the end of February, has</p> <p>7 HCMFA made any effort to obtain any information</p> <p>8 concerning this insurance claim from ICI Mutual?</p> <p>9 A I don't know where we got the source of –</p> <p>10 of the documents, but there – there was – they</p> <p>11 were searching for the ICI documents. I don't</p> <p>12 know if it came from ICI or another source.</p> <p>13 Q Anybody –</p> <p>14 A I don't –</p> <p>15 Q Anybody from HCMFA reach out to ICI Mutual</p> <p>16 for information relating to this insurance claim</p> <p>17 at any time?</p> <p>18 A I don't – not that I'm aware of.</p> <p>19 Q Okay.</p> <p>20 A They may have, but I don't know.</p> <p>21 Q Do you know when the claim was filed?</p> <p>22 A I don't. I – I don't. I – I think it</p> <p>23 may have been late 2018, but I'm not sure.</p> <p>24 Q And at the time HCMFA filed the claim for</p> <p>25 insurance, it had already formed the opinion that</p>



<p style="text-align: right;">Page 146</p> <p>1 Dustin Norris</p> <p>2 Highland Capital Management, LP, was the</p> <p>3 responsible party; correct?</p> <p>4 A I believe so, yes.</p> <p>5 Q Did HCMFA tell the insurance company that</p> <p>6 Highland Capital Management was the responsible</p> <p>7 party?</p> <p>8 A I'm not sure. Again, this was Highland</p> <p>9 employees that filled out the materials and was</p> <p>10 working with ICI. So I don't know if your</p> <p>11 employees notified them.</p> <p>12 Q So the total estimated loss was</p> <p>13 approximately \$7.5 million; right? That's the top</p> <p>14 number on the right?</p> <p>15 A Yes.</p> <p>16 Q Okay. And roughly two-thirds of that was</p> <p>17 financed through insurance proceeds that were</p> <p>18 received in February of 2019; correct?</p> <p>19 A Correct.</p> <p>20 Q And thereafter, it's HCMFA's contention</p> <p>21 that Highland paid it another \$7.4 million for</p> <p>22 purposes of providing compensation in connection</p> <p>23 with its negligent work on the -- on the TerreStar</p> <p>24 valuation error; correct?</p> <p>25 A Yes, that's correct. And that lines up,</p>	<p style="text-align: right;">Page 147</p> <p>1 Dustin Norris</p> <p>2 7.4 million, with the net -- net loss that's shown</p> <p>3 there, estimated loss.</p> <p>4 Q Right. So it's fair to say, then, from --</p> <p>5 that it's HCMFA's position that it received</p> <p>6 \$7.4 million from Highland as compensation, and</p> <p>7 approximately \$5 million from the insurance</p> <p>8 carrier as compensation for total receipts of</p> <p>9 \$12.4 million in connection with the NAV star --</p> <p>10 with the TerreStar valuation error?</p> <p>11 A Correct.</p> <p>12 Q Okay. Why would H- -- why does HCMFA</p> <p>13 contend that its entitled to \$12.4 million from</p> <p>14 Highland and the insurance company when the total</p> <p>15 loss was only \$7.4 million?</p> <p>16 A Yeah, it's -- it's our position that the</p> <p>17 collateral -- and I'm not an attorney. But</p> <p>18 understanding our position here, that under Texas</p> <p>19 law, the collateral source rule would permit you</p> <p>20 to recover value from the insurance company and to</p> <p>21 the individual or the -- the company that created</p> <p>22 the -- or caused you harm.</p> <p>23 Q So you're -- would you agree that HCMFA</p> <p>24 has profited by about \$5 million as a result of</p> <p>25 the NAV error under that theory?</p>
<p style="text-align: right;">Page 148</p> <p>1 Dustin Norris</p> <p>2 A I -- I don't know that -- how the theory</p> <p>3 relates to profits, but we've -- we've paid -- and</p> <p>4 say, "What's the logic for this?" We paid in</p> <p>5 insurance premiums for years, significant</p> <p>6 insurance premiums. And so there's been a loss</p> <p>7 for years and years for the insurance, and then</p> <p>8 we're now hitting that insurance to say there's a</p> <p>9 gain of \$5 million, whatever number you threw out.</p> <p>10 I would disagree with that.</p> <p>11 But, yes, there was proceeds of</p> <p>12 12-and-a-half million, but we've been paying in</p> <p>13 insurance proceeds or premiums for a long time.</p> <p>14 We're going to continue, and likely, I would</p> <p>15 imagine, those premiums will go up because of the</p> <p>16 claim.</p> <p>17 So I -- I'm, again, not a lawyer. I</p> <p>18 don't understand all the reasons why it's</p> <p>19 permitted. But our position is that the</p> <p>20 collateral source rule under Texas law permits you</p> <p>21 to receive from the insurance -- your insurance</p> <p>22 provider and from the party that did you harm.</p> <p>23 And as you said, here we believe it's negligence.</p> <p>24 It may be breach of contract, but we believe it's</p> <p>25 negligence.</p>	<p style="text-align: right;">Page 149</p> <p>1 Dustin Norris</p> <p>2 Q Okay. I just want to make this really</p> <p>3 clean.</p> <p>4 The estimated net loss from the NAV</p> <p>5 error is \$7.442 million; correct?</p> <p>6 A The estimated loss from the NAV error,</p> <p>7 yes.</p> <p>8 Q Okay. And notwithstanding that HCMFA</p> <p>9 believed that Highland was the responsible party,</p> <p>10 HCMFA, nevertheless, filed a claim for insurance</p> <p>11 coverage with ICI Mutual; correct?</p> <p>12 A That's correct.</p> <p>13 Q And ICI Mutual paid almost \$5 million in</p> <p>14 connection with that claim; correct?</p> <p>15 A Correct.</p> <p>16 Q And in addition to that almost \$5 million,</p> <p>17 it's HCMFA's position that it received and was</p> <p>18 entitled to receive an additional \$7.4 million</p> <p>19 from Highland as compensation for its error;</p> <p>20 correct?</p> <p>21 A Correct.</p> <p>22 Q So that notwithstanding the fact that the</p> <p>23 estimated net loss was \$7.44 million, HCMFA</p> <p>24 received and contends that it's entitled to keep</p> <p>25 \$12.4 million; correct?</p>

<p style="text-align: right;">Page 150</p> <p>1 Dustin Norris</p> <p>2 A That's correct, subject to our defenses.</p> <p>3 Q Okay. Did -- has -- has HCMFA ever</p> <p>4 informed ICI Mutual that it received \$7.4 million</p> <p>5 from Highland on account of the NAV error?</p> <p>6 A Not that I'm aware of.</p> <p>7 Q Has HCMFA ever told ICI Mutual that</p> <p>8 Highland was at fault?</p> <p>9 A Again, I think I already answered that. I</p> <p>10 don't know. Communication with ICI was done by</p> <p>11 the HCMLP employees as part of the shared services</p> <p>12 agreement, and I'm not sure if they communicated</p> <p>13 that.</p> <p>14 MR. MORRIS: Okay. I move to</p> <p>15 strike.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q I just -- I'm just asking for your</p> <p>18 knowledge, not speculation.</p> <p>19 Do you have any knowledge that anyone</p> <p>20 on behalf of HCMFA ever informed ICI Mutual that</p> <p>21 Highland was the cause of the NAV error?</p> <p>22 A I have no knowledge.</p> <p>23 MR. MORRIS: Let's take a short</p> <p>24 break. The time now is 3:06 -- or 2:06.</p> <p>25 Let's just come back at 3:20.</p>	<p style="text-align: right;">Page 151</p> <p>1 Dustin Norris</p> <p>2 (Recess from 2:07 p.m. to 2:21 p.m. CST)</p> <p>3 BY MR. MORRIS:</p> <p>4 Q So we were talking a bit about the</p> <p>5 insurance payment that was received in February</p> <p>6 of 2019. Do you remember that?</p> <p>7 A Yes.</p> <p>8 Q And there was a claim that was filed on</p> <p>9 behalf of HCMFA that resulted in that insurance</p> <p>10 proceed payment; correct?</p> <p>11 A Correct.</p> <p>12 Q And do you recall if that insurance claim</p> <p>13 was filed in 2018 or 2019?</p> <p>14 A I don't recall, but I believe it was late</p> <p>15 2018. But I don't know.</p> <p>16 Q Yeah.</p> <p>17 A And as we testified, we don't have that</p> <p>18 claim. We've searched for it. It's probably on</p> <p>19 your server, as I -- Frank Waterhouse and his team</p> <p>20 would have submitted that.</p> <p>21 Q Yeah. But you haven't made any effort to</p> <p>22 get it from the carrier; right?</p> <p>23 A No, not that I know of.</p> <p>24 Q Okay. And would you agree with me that</p> <p>25 it's probably extremely unlikely that an insurance</p>
<p style="text-align: right;">Page 152</p> <p>1 Dustin Norris</p> <p>2 carrier would have processed a claim of that</p> <p>3 magnitude in six weeks?</p> <p>4 A I know they expedited it and they</p> <p>5 specialize in -- sorry. I'll step back.</p> <p>6 I have no knowledge of how quick</p> <p>7 carriers make these claims --</p> <p>8 Q All right. Do you know --</p> <p>9 A Other than hail on my house -- hail damage</p> <p>10 on my roof, I don't have personal knowledge of</p> <p>11 insurance claims.</p> <p>12 MR. MORRIS: You know, I apologize,</p> <p>13 but can I ask Ms. Canty to put back up on</p> <p>14 the screen that last exhibit that we had?</p> <p>15 I don't have the exhibit number.</p> <p>16 All right. And go to the prior</p> <p>17 page. And go to the bottom of that page.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q So we've put back up on the screen, I</p> <p>20 think --</p> <p>21 MS. CANTY: 182.</p> <p>22 MR. MORRIS: 182.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q All right. And do you see in the next to</p> <p>25 the last paragraph, Mr. Norris, there's a</p>	<p style="text-align: right;">Page 153</p> <p>1 Dustin Norris</p> <p>2 reference to a period from March 18, 2018, to</p> <p>3 January 19, 2019?</p> <p>4 A Yes.</p> <p>5 Q That's what they've defined as the NAV</p> <p>6 restatement period. Do you see that?</p> <p>7 A Yes, I do.</p> <p>8 Q Okay. Looking at that period, does that</p> <p>9 refresh your recollection at all as to when in</p> <p>10 2018 HCMFA first learned about the NAV error?</p> <p>11 A No, because that was -- that was the</p> <p>12 period of time when the market -- the off-market</p> <p>13 or on-market transactions happened, March 18th.</p> <p>14 Q Okay.</p> <p>15 A It was sometime in between that they found</p> <p>16 out that there was an error.</p> <p>17 Q Okay. And do you know if it was the first</p> <p>18 half of 2018 or the second half?</p> <p>19 A The midyear audits of some of our funds, I</p> <p>20 believe, is when it first came up.</p> <p>21 Q And --</p> <p>22 A So 6/30 audits that were due 60 days</p> <p>23 later. So second half -- I believe second half of</p> <p>24 2018.</p> <p>25 Q So is it fair to say sometime in August or</p>

<p style="text-align: right;">Page 154</p> <p>1 Dustin Norris</p> <p>2 September is when HCMFA first learned about it?</p> <p>3 A About – define "it." Is that the NAV</p> <p>4 error.</p> <p>5 Q I apologize. Let me ask the question</p> <p>6 again.</p> <p>7 Is it fair to say, based on the timing</p> <p>8 of the audit, 60 days after June 30th would take</p> <p>9 us to approximately August 31st; right?</p> <p>10 A It does.</p> <p>11 Q And so is it fair to say, then, that HCMFA</p> <p>12 first learned about the NAV error sometime in</p> <p>13 August of 2018 while it was preparing the</p> <p>14 financials for the period ending June 30th?</p> <p>15 A No. I don't think there was a</p> <p>16 determination of whether there was a NAV error or</p> <p>17 not at that point. I think the reason they have</p> <p>18 going all the way to January 19 – 2019 is it</p> <p>19 wasn't determined – finalized if there is an</p> <p>20 error or not.</p> <p>21 There was a lot of discussion with the</p> <p>22 SEC and auditors over whether there was or wasn't</p> <p>23 an error, what the amount was, what the proper</p> <p>24 valuation should be. There was consultation with</p> <p>25 the SEC, and that process lasted, I believe,</p>	<p style="text-align: right;">Page 155</p> <p>1 Dustin Norris</p> <p>2 several weeks, if not months.</p> <p>3 So that is not when they found out</p> <p>4 about a NAV error, but the questions over</p> <p>5 valuation, yes.</p> <p>6 Q Okay. So then let me state the question</p> <p>7 differently then.</p> <p>8 Is it fair to say that HCMFA first</p> <p>9 learned in or about August 2018 of the valuation</p> <p>10 issues?</p> <p>11 A The "about" is key here. I don't know the</p> <p>12 specific date, but around that time or earlier –</p> <p>13 Q Okay.</p> <p>14 A – or later. On or around that time.</p> <p>15 Q And did HCMFA conclude, at the same time</p> <p>16 it learned of the valuation issues, that HCMFA was</p> <p>17 the responsible party? Or was there a gap between</p> <p>18 learning about the valuation issues and making the</p> <p>19 determination that Highland was the responsible</p> <p>20 party?</p> <p>21 A Yeah, first you said HCMFA was the</p> <p>22 responsible party, and then you said Highland.</p> <p>23 Q I apologize. Let me try and restate that.</p> <p>24 Did HCMFA conclude that Highland was</p> <p>25 the responsible party at or around the same time</p>
<p style="text-align: right;">Page 156</p> <p>1 Dustin Norris</p> <p>2 that it learned of the valuation issues, or was</p> <p>3 there a period during which it knew about the</p> <p>4 valuation issues, but not – had not yet formed</p> <p>5 the conclusion that Highland was the responsible</p> <p>6 party?</p> <p>7 A From the beginning, everybody knew who the</p> <p>8 responsible party was for the valuation. Those</p> <p>9 reporting the issues, those responding to</p> <p>10 auditors, those responding to SEC and the board</p> <p>11 were all HCMLP employees from the beginning. But</p> <p>12 I don't have a specific date.</p> <p>13 Again, as you look here, it doesn't</p> <p>14 say when the NAV error was determined, but from</p> <p>15 the beginning, it was the knowledge that HCMLP was</p> <p>16 responsible for the valuations.</p> <p>17 Q Okay. Do you know when HCMFA first</p> <p>18 determined that the estimated loss was</p> <p>19 approximately \$7.4 million?</p> <p>20 A I don't, no. I don't have specifics, but</p> <p>21 it was after there was a determination there was</p> <p>22 actually a NAV error. And it may be in some of</p> <p>23 the documents that you have. I believe it may be</p> <p>24 in, you know, a memo to the board or the SEC, but</p> <p>25 I don't know offhand.</p>	<p style="text-align: right;">Page 157</p> <p>1 Dustin Norris</p> <p>2 Q Do you know when there was a determination</p> <p>3 that there was a NAV error?</p> <p>4 A I don't know the specific time, no.</p> <p>5 Q Do you know if it was in 2019 or 2018?</p> <p>6 A I don't remember.</p> <p>7 Q Is it fair to say that it was before</p> <p>8 May of 2019?</p> <p>9 A That there was a determination there was a</p> <p>10 NAV error? Yes.</p> <p>11 Q And is it fair to say that HCMFA had</p> <p>12 concluded that the loss of that NAV error was</p> <p>13 going to be more than a million dollars prior to</p> <p>14 May 2019?</p> <p>15 A More than a million? Probably – yes.</p> <p>16 Q Okay. Is there a reason that HCMFA waited</p> <p>17 until May to have Highland pay it for the</p> <p>18 compensation?</p> <p>19 A I think that the whole process – as you</p> <p>20 see, the resolution memo is in May to the board.</p> <p>21 That was the conclusion of the overall process.</p> <p>22 So our stance would be that that was when it was</p> <p>23 the right time and everything was – the right</p> <p>24 time to be sent.</p> <p>25 MR. MORRIS: Okay. Can we put up</p>

<p style="text-align: right;">Page 158</p> <p>1 Dustin Norris</p> <p>2 on the screen a document that's been</p> <p>3 marked as, I think, as Exhibit 13? I</p> <p>4 don't know if you're able to get that,</p> <p>5 La Asia.</p> <p>6 MS. CANTY: Yup, I got it.</p> <p>7 MR. MORRIS: Thank you.</p> <p>8 (Exhibit 13 tendered.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q Are you aware, sir, that there came a</p> <p>11 point in time when HCMFA amended its answer?</p> <p>12 A Yes.</p> <p>13 Q And I think topic –</p> <p>14 A Topic 2 is our amended answer.</p> <p>15 Q Okay. So that's the document that's in</p> <p>16 front of you?</p> <p>17 A Yes.</p> <p>18 Q And you've seen that before; correct?</p> <p>19 A Yes.</p> <p>20 Q Okay.</p> <p>21 MR. MORRIS: Can we turn to Page 5</p> <p>22 of 9, please?</p> <p>23 And if we can scroll to the bottom.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q These are HCMFA's affirmative defenses; is</p>	<p style="text-align: right;">Page 159</p> <p>1 Dustin Norris</p> <p>2 that right?</p> <p>3 A On the second amended answer, yes.</p> <p>4 Q Yes.</p> <p>5 A I'm sorry. The first amended answer, yes.</p> <p>6 Q And as of today, is it your understanding</p> <p>7 that this is HCMFA's operative pleading?</p> <p>8 A No.</p> <p>9 Q Has it been amended after this time?</p> <p>10 A Yeah, we –</p> <p>11 MR. RUKAVINA: Well, he doesn't</p> <p>12 know what "operative pleading" means.</p> <p>13 THE WITNESS: Oh.</p> <p>14 MR. RUKAVINA: Yes, it is our</p> <p>15 operative pleading, Dustin.</p> <p>16 THE WITNESS: It is our operative</p> <p>17 pleading then.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q And I didn't mean to trick you. I</p> <p>20 apologize. I just meant to say that this has not</p> <p>21 been amended as of today; correct?</p> <p>22 A We filed a – wait. Let me see what it's</p> <p>23 called.</p> <p>24 Q You filed a motion for permission to amend</p> <p>25 it further –</p>
<p style="text-align: right;">Page 160</p> <p>1 Dustin Norris</p> <p>2 A Yes.</p> <p>3 Q – but that motion hasn't been granted;</p> <p>4 right?</p> <p>5 A To my understanding, no.</p> <p>6 Q Okay. And you understand that your – the</p> <p>7 answer that's up on the screen can't be amended</p> <p>8 unless the Court grants the motion; right?</p> <p>9 A I – if you tell me that that's the</p> <p>10 process, I'll take that for what it's worth. I'm</p> <p>11 not an attorney. I don't know the process.</p> <p>12 Q Okay. So let's just look at this</p> <p>13 document.</p> <p>14 Is it fair to say that Paragraph 38</p> <p>15 through 45 deals with –</p> <p>16 A I'm going to grab the –</p> <p>17 Q Yeah.</p> <p>18 A – thing here so I can see it on my desk,</p> <p>19 too.</p> <p>20 Q Sure.</p> <p>21 A Okay.</p> <p>22 38?</p> <p>23 Q Right.</p> <p>24 A Okay.</p> <p>25 Q Now – actually, a little background.</p>	<p style="text-align: right;">Page 161</p> <p>1 Dustin Norris</p> <p>2 This amended complaint was prepared</p> <p>3 after DC Sauter conducted an investigation</p> <p>4 concerning the circumstances surrounding the two</p> <p>5 notes that Highland was suing on; right?</p> <p>6 A Yes. My understanding is it is after</p> <p>7 he – so background, when he – we filed our</p> <p>8 initial response, we didn't have access to the</p> <p>9 HCMLP employees during that time period. They</p> <p>10 were not permitted to talk to us about things like</p> <p>11 this. And so he did the best he could to prepare</p> <p>12 a response. But once they were mostly all fired</p> <p>13 by HCMLP and formed their own company called</p> <p>14 Skyview, he was able to talk to them on</p> <p>15 particulars. As you note in his – his statement,</p> <p>16 he was able to talk to Frank Waterhouse, where he</p> <p>17 wasn't before, on this topic.</p> <p>18 Q Right. So by the time this document has</p> <p>19 been prepared, HCMFA had copies of the notes that</p> <p>20 Highland was suing on for six months; right?</p> <p>21 Because the lawsuit was commenced in January, and</p> <p>22 the notes were attached as exhibits to the</p> <p>23 complaint; right?</p> <p>24 A Yes. This is July 6th this is filed.</p> <p>25 Q Right. Okay. So this is filed almost six</p>

<p style="text-align: right;">Page 162</p> <p>1 Dustin Norris</p> <p>2 months after the complaint is filed; right?</p> <p>3 A More like a five-month – five months and</p> <p>4 a week, but yeah.</p> <p>5 Q All right. I won't quarrel with you.</p> <p>6 A Or five and a half – five and a half</p> <p>7 months, yeah.</p> <p>8 Q Okay.</p> <p>9 A Whether you consider that –</p> <p>10 Q Okay.</p> <p>11 A – six full months or not.</p> <p>12 Q So –</p> <p>13 A We know the dates January 22nd and</p> <p>14 July 6th.</p> <p>15 Q Okay. So for that entire time period of</p> <p>16 time, there's no dispute that HCMFA had in its</p> <p>17 possession copies of the notes that Highland was</p> <p>18 suing on; correct?</p> <p>19 A I'm looking at the original – you said</p> <p>20 they were attached, but I –</p> <p>21 Q Yeah.</p> <p>22 A If you want to show me the original notes</p> <p>23 on the original filing.</p> <p>24 Q Well, I asked you to look at the original</p> <p>25 complaint. I think – was the original complaint</p>	<p style="text-align: right;">Page 163</p> <p>1 Dustin Norris</p> <p>2 Topic Number 1? No. It's just the answer.</p> <p>3 In looking at the answer, did you look</p> <p>4 at the original complaint?</p> <p>5 A Yes.</p> <p>6 Q Do you recall seeing that the notes were</p> <p>7 attached to the original complaint?</p> <p>8 A I looked at thousands of pages in</p> <p>9 preparation, so I just – I could take your word</p> <p>10 for it if you say it's in there, or if you want to</p> <p>11 show it to me, we can look at it.</p> <p>12 MR. RUKAVINA: They are, Dustin.</p> <p>13 They are.</p> <p>14 MR. MORRIS: Yeah. I think you'll</p> <p>15 have to take my word for it. Thank you,</p> <p>16 Davor, for confirming my word.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q So let me just try this again to make it</p> <p>19 clean.</p> <p>20 Based on my representation, that</p> <p>21 Mr. Rukavina has agreed with, that the notes that</p> <p>22 Highland are suing on were attached to its</p> <p>23 complaint in January, you would agree with me that</p> <p>24 HCMFA had the notes in its possession from at</p> <p>25 least the time the complaint was filed until the</p>
<p style="text-align: right;">Page 164</p> <p>1 Dustin Norris</p> <p>2 time HCMFA filed this amended answer on July 6th;</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q And this amended answer was filed because</p> <p>6 HCMFA had a – had previously made a motion to the</p> <p>7 Court for leave to amend its answer; correct?</p> <p>8 MR. RUKAVINA: That's correct,</p> <p>9 Dustin.</p> <p>10 He wouldn't know about that, but</p> <p>11 that's all correct.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q Okay. Well, you're familiar with the</p> <p>14 Sauter declaration; right?</p> <p>15 A I am.</p> <p>16 Q And the Sauter declaration purports to</p> <p>17 describe an investigation that Mr. Sauter</p> <p>18 undertook to determine the circumstances</p> <p>19 surrounding the notes; is that fair?</p> <p>20 A I don't know if I'd characterize it</p> <p>21 investigation, but he was tasked with – and I've</p> <p>22 got it right here. I would refer you to the</p> <p>23 agreement on – or his – to his declaration on –</p> <p>24 Q How would you – how would you</p> <p>25 characterize the work that he did? An</p>	<p style="text-align: right;">Page 165</p> <p>1 Dustin Norris</p> <p>2 investigation? An analysis? What word do</p> <p>3 you – would you use? Due diligence? How would</p> <p>4 you characterize the work that Mr. Sauter did</p> <p>5 that's set forth in his declaration?</p> <p>6 A I – I'm looking here. I want to see how</p> <p>7 he characterizes it.</p> <p>8 I think he does a very good job of</p> <p>9 explaining.</p> <p>10 My investigation would be of the</p> <p>11 following. So he calls it an investigation.</p> <p>12 Q Okay. So HCMFA would agree that after</p> <p>13 Mr. Waterhouse left the employ of Highland, that</p> <p>14 DC Sauter conducted an investigation into the</p> <p>15 circumstances surrounding the notes that Highland</p> <p>16 was suing on; correct?</p> <p>17 A Correct.</p> <p>18 Q And as part of that investigation, he</p> <p>19 spoke with Mr. Waterhouse; correct?</p> <p>20 A Yes.</p> <p>21 Q And as part of that investigation, he</p> <p>22 spoke with Mr. Dondero; correct?</p> <p>23 A I believe so, but let me – let me confirm</p> <p>24 in his statement.</p> <p>25 Because I believe in – yeah.</p>



<p style="text-align: right;">Page 166</p> <p>1 Dustin Norris</p> <p>2 Q Is that correct, that he spoke with</p> <p>3 Mr. Dondero in connection with his investigation?</p> <p>4 A I'm – I'm seeing what he rep'd to in his</p> <p>5 statement.</p> <p>6 Q And does his statement say that? I don't</p> <p>7 have it in front of me.</p> <p>8 A I don't know. That's what I'm looking at.</p> <p>9 Q And you don't know, independently of the</p> <p>10 document, whether Mr. Sauter spoke with</p> <p>11 Mr. Dondero as part of his investigation?</p> <p>12 A I know he did. I know he talked</p> <p>13 throughout from when we received the original</p> <p>14 complaint on. I just – you're asking about the</p> <p>15 time frame between filing the original filing.</p> <p>16 And I think he may have spoken with him before</p> <p>17 that, too, but I – I just want to take a...</p> <p>18 So at the time – this is on</p> <p>19 March 1st, filed the defendant's original answer.</p> <p>20 At that – at the time the debtor filed a</p> <p>21 complaint, I promptly undertook an internal review</p> <p>22 of the background facts concerning the notes. I</p> <p>23 had no knowledge of them since I had not been</p> <p>24 employed by HCMFA. And a few employees of HCMFA</p> <p>25 had no knowledge of notes. I also discussed the</p>	<p style="text-align: right;">Page 167</p> <p>1 Dustin Norris</p> <p>2 notes of James Dondero, formerly the CEO of the</p> <p>3 debtor, Mr. Dondero.</p> <p>4 So this is March 1st when that first</p> <p>5 filing was made. So he did speak with Mr. Dondero</p> <p>6 prior, and then I believe the source of the</p> <p>7 additional information was being able to speak</p> <p>8 with Frank Waterhouse and Will Mabry.</p> <p>9 Q Okay. And is it fair to say that the</p> <p>10 amended complaint is based on Mr. Sauter's</p> <p>11 investigation?</p> <p>12 A Yes, I believe so.</p> <p>13 Q Yeah.</p> <p>14 A Yes.</p> <p>15 Q That's why HCMFA amended its complaint.</p> <p>16 It's because Mr. Sauter had undertaken this</p> <p>17 investigation, and he learned what he believed</p> <p>18 were relevant facts, and those facts are described</p> <p>19 in his declaration, and they formed the basis of</p> <p>20 the affirmative defenses that we're looking at now</p> <p>21 in the amended answer, fair?</p> <p>22 A Let me pull up the amended answer just</p> <p>23 to –</p> <p>24 Q It's up on the screen, but if you have a</p> <p>25 hard copy, that's fine.</p>
<p style="text-align: right;">Page 168</p> <p>1 Dustin Norris</p> <p>2 A Yeah. I have a hard copy here, although I</p> <p>3 may have mixed my documents.</p> <p>4 Yeah, it was based on additional facts</p> <p>5 that weren't available at the time of the original</p> <p>6 response.</p> <p>7 Q Okay. And is it fair to say that</p> <p>8 Paragraphs 38 through 45 relate to the affirmative</p> <p>9 defense that Highland was responsible for the NAV</p> <p>10 error, and the \$7.4 million payment was intended</p> <p>11 to be compensation for Highland's negligent work?</p> <p>12 A Sorry. Can you ask that one more time?</p> <p>13 There was a couple parts there.</p> <p>14 Q No problem.</p> <p>15 Is it fair to say that</p> <p>16 Paragraphs 35 – withdrawn.</p> <p>17 Is it fair to say that Paragraphs 38</p> <p>18 to 45 relate to HCMFA's affirmative defense that</p> <p>19 the \$7.4 million that was transferred from</p> <p>20 Highland to HCMFA in May 2019 was intended to be</p> <p>21 compensation for Highland's negligent work in</p> <p>22 connection with the NAV error and not in the form</p> <p>23 of a loan?</p> <p>24 A You said 38 to 42?</p> <p>25 Q 38 to 45.</p>	<p style="text-align: right;">Page 169</p> <p>1 Dustin Norris</p> <p>2 A 38 to 45.</p> <p>3 Yeah, it -- the NAV error items are</p> <p>4 included in there as one of our defenses.</p> <p>5 Q Right.</p> <p>6 A 43 and 44 and 45 discuss additional</p> <p>7 defenses related to the note and who may or may</p> <p>8 not have signed the note and who had authority to</p> <p>9 sign the note.</p> <p>10 Q Okay.</p> <p>11 MR. MORRIS: Can you – can we turn</p> <p>12 to Paragraph 42?</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q Do you see the first four – first few</p> <p>16 words in Paragraph 42 are, quote: "The defendant</p> <p>17 accepted responsibility for the NAV error"?</p> <p>18 A Yes.</p> <p>19 Q Okay. "Defendant" there refers to</p> <p>20 Highland Capital Management, LP; correct?</p> <p>21 A No. I believe –</p> <p>22 Q Oh, I apologize. I apologize.</p> <p>23 A Thank you.</p> <p>24 Q It's HCMFA; right?</p> <p>25 A HCMFA.</p>



<p style="text-align: right;">Page 170</p> <p>1 Dustin Norris</p> <p>2 Q Okay. And is – did – did HCMFA accept</p> <p>3 responsibility for the NAV error?</p> <p>4 A They did. They – they are the adviser,</p> <p>5 and there's already – in the next sentence, HCMLP</p> <p>6 then accepted that they had a contract with and</p> <p>7 accepted responsibility.</p> <p>8 Q Okay. And so when did the plaintiff</p> <p>9 accept responsibility for having caused the NAV</p> <p>10 error?</p> <p>11 A Again, going back to – this was always</p> <p>12 known and communicated that it was HCMLP</p> <p>13 employees. It was the valuation services they</p> <p>14 were performing. The legal and compliance team</p> <p>15 was all outsourced in the shared services</p> <p>16 agreement.</p> <p>17 And that was – again, there's not a</p> <p>18 singular determination; but Jim Dondero, as</p> <p>19 president, I would say effectuated that with the</p> <p>20 payment of the NAV – for the NAV error.</p> <p>21 Q So you can't tell me when the plaintiff</p> <p>22 accepted responsibility for having caused the NAV</p> <p>23 error; correct?</p> <p>24 A Not a specific date.</p> <p>25 Q Okay. And it's HCMFA's position that Jim</p>	<p style="text-align: right;">Page 171</p> <p>1 Dustin Norris</p> <p>2 Dondero, in his capacity as the president of</p> <p>3 Highland Capital Management, LP, accepted</p> <p>4 responsibility on behalf of Highland Capital</p> <p>5 Management, LP, for having caused the NAV error?</p> <p>6 A He, and in addition all of the employees</p> <p>7 involved. Right? The valuation team members,</p> <p>8 Frank Waterhouse was CFO, Dave Klos overseeing the</p> <p>9 valuation process, they were all Highland</p> <p>10 employees, and Jim Dondero as well as president</p> <p>11 recognized that based on all the communications</p> <p>12 and conversations they would have had.</p> <p>13 MR. MORRIS: Okay. I'm going to –</p> <p>14 I'm going to move to strike.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q And I'm going to ask you to listen</p> <p>17 carefully to my question.</p> <p>18 Who had the authority to accept, on</p> <p>19 behalf of plaintiff, the responsibility for having</p> <p>20 caused the NAV error?</p> <p>21 A Ultimately Jim Dondero, as president here,</p> <p>22 had that authority.</p> <p>23 Q Okay. And then it says, quote: "The</p> <p>24 plaintiff ultimately, whether through insurance or</p> <p>25 its own funds, compensated the defendant."</p>
<p style="text-align: right;">Page 172</p> <p>1 Dustin Norris</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q Is that statement accurate?</p> <p>5 MR. RUKAVINA: I'll object to</p> <p>6 vagueness, given the different points in</p> <p>7 time.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q Does HCMFA believe that that statement is</p> <p>10 accurate today?</p> <p>11 A We know now. It's come out in discovery</p> <p>12 that – and it was represented that Mr. Dondero</p> <p>13 transferred money to Highland who transferred it</p> <p>14 to HCMFA. And I don't know – and it says "or,"</p> <p>15 "or its own funds." So it's accurate whether</p> <p>16 through insurance or its own funds.</p> <p>17 But at the time of this writing, we</p> <p>18 didn't have all the details and have firmed up</p> <p>19 those details, and I would refer you to</p> <p>20 depositions and the pleadings and our additional</p> <p>21 statement regarding cash and movement.</p> <p>22 Q Did Highland file an insurance claim, to</p> <p>23 the best of your knowledge?</p> <p>24 A Not that I know of.</p> <p>25 Q Did you ever ask anybody, in preparation</p>	<p style="text-align: right;">Page 173</p> <p>1 Dustin Norris</p> <p>2 for today's deposition, about that sentence in</p> <p>3 Paragraph 42 and whether or not Highland had ever</p> <p>4 filed an insurance claim?</p> <p>5 A I didn't ask about that sentence, but we</p> <p>6 did discuss whether Highland had filed an</p> <p>7 insurance claim. And to our knowledge, we don't</p> <p>8 know that they have. I'd, again, ask you as their</p> <p>9 attorney. That would be a question for you.</p> <p>10 Q Well, with all due respect, you have</p> <p>11 complete and unfettered access to the former</p> <p>12 president and CFO of Highland; correct?</p> <p>13 A I do, but – I'm sorry. You said</p> <p>14 president and CEO?</p> <p>15 Q The former president and CFO.</p> <p>16 A President and – I don't have unfettered</p> <p>17 access to the former CFO.</p> <p>18 MR. RUKAVINA: I'll – I'll object</p> <p>19 to that. We have been prohibited by</p> <p>20 Waterhouse's attorney from discussing the</p> <p>21 matter with him.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q You're – you're not allowed – did – did</p> <p>24 you – did HCMFA ask Mr. Waterhouse at any time</p> <p>25 whether Highland had filed an insurance claim?</p>

<p style="text-align: right;">Page 174</p> <p>1 Dustin Norris</p> <p>2 A Not – not that I know of. However, we've</p> <p>3 been not permitted to talk to him related to this,</p> <p>4 based on his attorney. So –</p> <p>5 Q Well, when did –</p> <p>6 A We never really discussed – go ahead.</p> <p>7 Q I'm sorry.</p> <p>8 A Go ahead. You were –</p> <p>9 Q I was just going to ask: When did that</p> <p>10 prohibition go into effect?</p> <p>11 MR. RUKAVINA: John, the witness</p> <p>12 wouldn't know that. It's about three</p> <p>13 months ago that the lady from Baker</p> <p>14 McKenzie, Deb – I don't know her last</p> <p>15 name – got angry at me because I tried to</p> <p>16 talk to Frank and she said, "Absolutely</p> <p>17 not. You're forbidden, and you're</p> <p>18 violating your ethical rules if you do."</p> <p>19 MR. MORRIS: So sometime in</p> <p>20 September?</p> <p>21 MR. RUKAVINA: I would say August</p> <p>22 or September.</p> <p>23 MR. MORRIS: Okay.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q But sometime – but you had – HCMFA had</p>	<p style="text-align: right;">Page 175</p> <p>1 Dustin Norris</p> <p>2 complete, unfettered access to Mr. Waterhouse from</p> <p>3 the time he left Highland in early March 2021</p> <p>4 until at least the end of July 2021; right?</p> <p>5 A Yeah. And I would add a point to</p> <p>6 Mr. Sauter's declaration and our pleadings and the</p> <p>7 depositions for the various details of what we've</p> <p>8 discovered since. However, the unfettered access</p> <p>9 was also inhibited – or – or Mr. Sauter</p> <p>10 represented this. There was a lot going on in</p> <p>11 March, April, May of 2021.</p> <p>12 Q Yeah.</p> <p>13 A And we were trying to lift out an entire</p> <p>14 business and keep everything afloat, and – as</p> <p>15 you're very aware. And so there was a lot going</p> <p>16 on.</p> <p>17 Q Right. Right.</p> <p>18 Do you see – can we go to</p> <p>19 Paragraph 43, please?</p> <p>20 A Yes.</p> <p>21 MR. MORRIS: If we could just</p> <p>22 scroll down to Paragraph 43, please.</p> <p>23 Thank you.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q Now, again, this amended complaint is</p>
<p style="text-align: right;">Page 176</p> <p>1 Dustin Norris</p> <p>2 filed is July 2006; correct?</p> <p>3 A July 6th, not July 2006.</p> <p>4 Q I apologize. Let me ask the question</p> <p>5 again.</p> <p>6 This amended answer was filed on</p> <p>7 July 6th, 2021; correct?</p> <p>8 A Correct.</p> <p>9 Q And it was filed after Mr. Sauter</p> <p>10 conducted his investigation to determine the</p> <p>11 circumstances surrounding the note; correct?</p> <p>12 A Uh-huh, correct.</p> <p>13 Q And it was filed after HCMFA had had in</p> <p>14 its possession since January copies of the notes</p> <p>15 that Highland was suing on; correct?</p> <p>16 A Correct.</p> <p>17 Q And it was filed at a time before any</p> <p>18 limitation or prohibition was placed on HCMFA's</p> <p>19 ability to communicate with Mr. Waterhouse since</p> <p>20 the time he had left Highland; correct?</p> <p>21 A Sorry. You want to repeat the first part</p> <p>22 of that?</p> <p>23 Q Sure.</p> <p>24 It was filed at a time after</p> <p>25 Mr. Waterhouse left the employ of Highland but</p>	<p style="text-align: right;">Page 177</p> <p>1 Dustin Norris</p> <p>2 before there was any limitation or restriction</p> <p>3 imposed on HCMFA's ability to communicate with</p> <p>4 Mr. Waterhouse?</p> <p>5 A Yes. Once he left in March of 2021 is</p> <p>6 when that happened. And, again, in March, we</p> <p>7 were, on both sides, the creation of Skyview, as</p> <p>8 well as our employees, trying as – doing</p> <p>9 everything we could do to transition the</p> <p>10 businesses and services. And so that was an</p> <p>11 important time.</p> <p>12 MR. MORRIS: Okay. Move to strike.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q I just want to confirm that HCMFA had</p> <p>15 unfettered access to Mr. Waterhouse between the</p> <p>16 time he left Highland and the time this amended</p> <p>17 answer was filed in July.</p> <p>18 A We had access to him to ask him what we</p> <p>19 needed. Unfettered in the sense of, "Hey, we can</p> <p>20 access you whenever we need," no, because there</p> <p>21 was a lot involved in launching and – launching</p> <p>22 of Skyview and creating all the services needed</p> <p>23 for our funds since we – HCMFP is sharing</p> <p>24 services provided –</p> <p>25 Q Does Mr. Sauter have a role with HCMFA?</p>

<p style="text-align: right;">Page 178</p> <p>1 Dustin Norris</p> <p>2 A I don't believe so.</p> <p>3 Q Do you know who authorized him to conduct</p> <p>4 this investigation?</p> <p>5 A Yeah. It would have been management,</p> <p>6 Mr. Dondero, and probably our outside counsel. At</p> <p>7 the time, we had been utilizing Highland's</p> <p>8 services as legal services, all the way up until</p> <p>9 the end of February.</p> <p>10 There were legal and compliance</p> <p>11 services that were part of the shared services</p> <p>12 agreement. There was an entire legal team, entire</p> <p>13 team of litigators who were unable to work on</p> <p>14 this.</p> <p>15 Mr. Sauter was a real estate attorney</p> <p>16 for us, and he picked up the slack and was</p> <p>17 assigned by Mr. Dondero to help in these causes</p> <p>18 working with outside counsel, because HCMLP was</p> <p>19 not providing or no longer able to provide those</p> <p>20 legal services based on their – their view, even</p> <p>21 though they were contracted to do those.</p> <p>22 Q That contract ended at the end of</p> <p>23 February; isn't that right?</p> <p>24 A That's correct.</p> <p>25 Q And with the exception of a couple of</p>	<p style="text-align: right;">Page 179</p> <p>1 Dustin Norris</p> <p>2 people, Highland's legal team migrated to Skyview</p> <p>3 in early 2021; is that fair?</p> <p>4 A Yes.</p> <p>5 Q Okay. And among the people who migrated</p> <p>6 were Stephanie Vitiello; correct?</p> <p>7 A Yes.</p> <p>8 Q And Isaac Leventon; correct?</p> <p>9 A Correct.</p> <p>10 Q And he's the chief litigation guy at</p> <p>11 Highland prior to the bankruptcy; right?</p> <p>12 A I – I don't know if that was Isaac or if</p> <p>13 it was Scott Ellington. I don't know.</p> <p>14 Q And Scott – Scott Ellington also</p> <p>15 migrated; right?</p> <p>16 A Correct.</p> <p>17 Q So you had access to those folks for the</p> <p>18 first six months of 2021; right?</p> <p>19 A No. I would – our position is that those</p> <p>20 individuals were unable to work on – even though</p> <p>21 they had left, they were unable to work on</p> <p>22 something of this nature.</p> <p>23 I – I believe there was also a</p> <p>24 preliminary injunction still in place where Jim or</p> <p>25 his employees could not talk to Scott or Isaac. I</p>
<p style="text-align: right;">Page 180</p> <p>1 Dustin Norris</p> <p>2 don't remember all the specific details, but the</p> <p>3 legal team at Highland – or at Skyview was not</p> <p>4 working on this.</p> <p>5 Q Okay.</p> <p>6 A It was probably professional – I don't</p> <p>7 know the standards, but they were unable to work</p> <p>8 on – on this.</p> <p>9 Q All right. But you would agree that at</p> <p>10 the time HCMFA asked the court for permission to</p> <p>11 amend its answer, it did so based on Mr. Sauter's</p> <p>12 investigation; correct?</p> <p>13 A Yes, and I would caveat that subject to</p> <p>14 our – our pleadings.</p> <p>15 Q Right. And I think I moved to strike your</p> <p>16 earlier answer, so let me try and ask the question</p> <p>17 again.</p> <p>18 Did Mr. Dondero authorize Mr. Sauter</p> <p>19 to conduct the investigation?</p> <p>20 A I don't have specific knowledge of that.</p> <p>21 Q All right. I think you used the phrase</p> <p>22 "management." Did management authorize Mr. Sauter</p> <p>23 to conduct this investigation on behalf of HCMFA?</p> <p>24 A I don't know specifically who – who would</p> <p>25 have asked him to do the – Jim and – Jim Dondero</p>	<p style="text-align: right;">Page 181</p> <p>1 Dustin Norris</p> <p>2 asked him to help with the – the legal items, and</p> <p>3 stepped in and help in the absence of HCMLP's</p> <p>4 help.</p> <p>5 Q Okay. And based on that investigation</p> <p>6 looking at Paragraph 43, HCMFA took the position,</p> <p>7 quote: "Waterhouse signed the two promissory</p> <p>8 notes the subject of the complaint," close quote;</p> <p>9 correct?</p> <p>10 A That's right. It's our position that</p> <p>11 at – and I'd refer you to our amended pleading</p> <p>12 with additional information, but it's – it's our</p> <p>13 position that Mr. Waterhouse saw the notes, was</p> <p>14 confronted, discussed with DC, and said, "Look,</p> <p>15 that's my signature. I signed them."</p> <p>16 Q Okay. So that's – and it was on the</p> <p>17 basis of Mr. Waterhouse's conversation with</p> <p>18 Mr. Sauter that HCMFA wrote that sentence; is that</p> <p>19 fair?</p> <p>20 A I believe so. And I would refer you to</p> <p>21 Mr. Sauter's declaration as well, which goes into</p> <p>22 details on that.</p> <p>23 Q And Mr. Sauter specifically said that</p> <p>24 Mr. Waterhouse signed the notes; correct?</p> <p>25 A We can look at Mr. Sauter's declaration.</p>

<p style="text-align: right;">Page 182</p> <p>1 Dustin Norris</p> <p>2 I – I believe he said he was – Mr. Waterhouse</p> <p>3 told him he signed, but –</p> <p>4 Q Right. And, in fact, HCMFA's position</p> <p>5 throughout this entire case was that</p> <p>6 Mr. Waterhouse signed the notes, but he did so by</p> <p>7 mistake and without authority; correct?</p> <p>8 A That's right. And if you look at the</p> <p>9 depositions, he testified of that, that he didn't</p> <p>10 remember signing them, and he didn't have a</p> <p>11 recollection, and Mr. Dondero never told him to</p> <p>12 sign it, and he never asked him whether – or</p> <p>13 he – Mr. Dondero told him never – told him</p> <p>14 shouldn't be – didn't – Mr. Dondero didn't tell</p> <p>15 him it was a note, and he never asked if it should</p> <p>16 be a note.</p> <p>17 With this – this amended pleading,</p> <p>18 the thought was he mistakenly thought it was a</p> <p>19 note, because that was the practice for other</p> <p>20 notes or other – other transfers of this</p> <p>21 nature – not of this nature, but other transfers</p> <p>22 between companies, and so he had papered it up as</p> <p>23 a note.</p> <p>24 But if you look at the depositions,</p> <p>25 you'll see that additional details came out that</p>	<p style="text-align: right;">Page 183</p> <p>1 Dustin Norris</p> <p>2 he told his controller, Mr. Klos, to transfer the</p> <p>3 funds, and Mr. Klos then turned around and asked</p> <p>4 Kristin to paper it up as a note, and to transfer</p> <p>5 the cash. And Ms. Hendrix – Kristin Hendrix then</p> <p>6 added Mr. Waterhouse's JPEG signature to the Word</p> <p>7 document, which then was filed away.</p> <p>8 So we – we, through the process of</p> <p>9 depositions and discovery, were able to find more</p> <p>10 information that Frank Waterhouse did not</p> <p>11 remember. He didn't remember signing but said his</p> <p>12 signature is on there, so he must have signed it.</p> <p>13 MR. MORRIS: All right. I move to</p> <p>14 strike. My question is really, really</p> <p>15 simple.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q Up until the time that you filed the</p> <p>18 motion last night, HCMFA's publicly stated</p> <p>19 position has always been that Frank Waterhouse</p> <p>20 signed the notes, and that he did so by mistake</p> <p>21 and without authority; correct?</p> <p>22 A Correct. It says it here:</p> <p>23 "Mr. Waterhouse made a mistake in preparing and</p> <p>24 signing the notes for the defendant."</p> <p>25 Q Okay. Good enough.</p>
<p style="text-align: right;">Page 184</p> <p>1 Dustin Norris</p> <p>2 A And then it says: "Upon information" –</p> <p>3 Q That's –</p> <p>4 A – "and belief, Waterhouse was not aware</p> <p>5 that the payment from the plaintiff to defendant</p> <p>6 were to compensate the defendant for the NAV</p> <p>7 error."</p> <p>8 Q I'm sorry. Where are you reading from?</p> <p>9 Oh, that's 44?</p> <p>10 A That's in number 44.</p> <p>11 Q Okay.</p> <p>12 A Yeah. "Waterhouse made a mistake in</p> <p>13 preparing and signing the notes for the</p> <p>14 defendant."</p> <p>15 Q Right. Okay.</p> <p>16 A But, again, I'll refer you to the</p> <p>17 depositions and the evidence –</p> <p>18 MR. MORRIS: Move to strike. It's</p> <p>19 not responsive to my question.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q Do you see in Paragraph 47 there's a</p> <p>22 reference to "lack of consideration"?</p> <p>23 A Yes.</p> <p>24 Q Okay. What does that mean?</p> <p>25 A My understanding is that there was no</p>	<p style="text-align: right;">Page 185</p> <p>1 Dustin Norris</p> <p>2 consideration. We – there were notes, but there</p> <p>3 was no payment for those notes. The payment was</p> <p>4 for compensation related to the NAV error, so</p> <p>5 there was no payment – or no compensation for</p> <p>6 notes that had been drafted.</p> <p>7 Q Okay. And the next defense there in</p> <p>8 Paragraph 47 is "mutual mistake."</p> <p>9 Do you see that?</p> <p>10 A Correct.</p> <p>11 Q Do you have any facts that support that,</p> <p>12 that the mistake was mutual?</p> <p>13 A Yeah. I – I would look to the</p> <p>14 depositions. And if you go to the testimony of</p> <p>15 Frank and Jim Dondero and David Klos and Kristin,</p> <p>16 it was a clear path and a clear record of mutual</p> <p>17 mistake.</p> <p>18 Jim told Frank to transfer the money</p> <p>19 for the NAV error. Frank then goes, tells</p> <p>20 Mr. Klos, the controller, to go and transfer the</p> <p>21 money, who tells Kristin to transfer the money –</p> <p>22 or to make the transfer and to paper it up.</p> <p>23 Kristin then papers it up, following the process</p> <p>24 that she's always followed or she said she's</p> <p>25 followed for many other notes.</p>

<p style="text-align: right;">Page 186</p> <p>1 Dustin Norris</p> <p>2 She lacked the authority to do so.</p> <p>3 Mr. Klos lacked the authority. Mr. Waterhouse was</p> <p>4 never told to make a note, and so the note itself</p> <p>5 is drafted by an accountant without authority to</p> <p>6 do so with a maker and a counterparty that is on</p> <p>7 both sides of this, representing supposedly both</p> <p>8 sides.</p> <p>9 And our position is that the maker of</p> <p>10 this – even if you look at the document, Frank</p> <p>11 Waterhouse signs as maker, not as his position.</p> <p>12 He's signing as the maker.</p> <p>13 And so there's various aspects of this</p> <p>14 that had errors on both sides, the – the position</p> <p>15 of HCMFA where they thought they had authority and</p> <p>16 the position of HCMLP.</p> <p>17 Q Anything else, sir?</p> <p>18 A I – I would refer you to the – again,</p> <p>19 the depositions and our pleadings. But there's –</p> <p>20 there's a host of support there.</p> <p>21 Q Other than the deposition transcripts and</p> <p>22 the – and HCMFA's pleadings, are you aware of any</p> <p>23 document anywhere in the world that corroborates</p> <p>24 the defense of mutual mistake?</p> <p>25 A Other than the documents, the pleadings,</p>	<p style="text-align: right;">Page 187</p> <p>1 Dustin Norris</p> <p>2 and any schedules and other forms that are filed</p> <p>3 with the court, there's – there's plenty there.</p> <p>4 Q Okay. What schedules are you referring</p> <p>5 to?</p> <p>6 A I would say all of your supporting</p> <p>7 schedules, all of your documentation, the notes</p> <p>8 themselves, the – the Word documents that we</p> <p>9 received as well in discovery that have the</p> <p>10 metadata showing that Kristin Hendrix applied</p> <p>11 Frank Waterhouse's JPEG signature.</p> <p>12 Q Okay.</p> <p>13 A All of those items as well as, again,</p> <p>14 depositions all – of all those individuals.</p> <p>15 Q So – so I just want to make sure that I</p> <p>16 have this clear.</p> <p>17 So you've got the JPEG documents.</p> <p>18 You've got the deposition transcripts. You know</p> <p>19 what? Let me restate the question.</p> <p>20 You've identified the JPEG documents.</p> <p>21 Other than the JPEG documents, are you aware of</p> <p>22 any document in the world that was created before</p> <p>23 the answer date that supports or corroborates the</p> <p>24 defense of mutual mistake?</p> <p>25 A I'm – again, I – I'd point to the –</p>
<p style="text-align: right;">Page 188</p> <p>1 Dustin Norris</p> <p>2 let – let me take a look here again.</p> <p>3 Q What is it you're looking at?</p> <p>4 A This is the amended complaint.</p> <p>5 Q Okay.</p> <p>6 A Which paragraph was that again?</p> <p>7 Q It's 47.</p> <p>8 A 47.</p> <p>9 Q Yeah. There's – it's a – there's –</p> <p>10 A Mutual mistake.</p> <p>11 Q – one of the defenses there. It's up on</p> <p>12 the screen.</p> <p>13 A Yeah.</p> <p>14 Q There's "mutual mistake," and I just want</p> <p>15 you to identify for me every document that HCMFA</p> <p>16 is aware of that was created before the answer</p> <p>17 date of March 1st, 2001 [sic], other than the JPEG</p> <p>18 documents –</p> <p>19 A I would – I would refer you to –</p> <p>20 Q – that support or corroborate – that</p> <p>21 support or corroborate the defense of mutual</p> <p>22 mistake?</p> <p>23 A Yeah. And I'd also point you to DC</p> <p>24 Sauter's declaration.</p> <p>25 Q Okay. That wasn't created before the</p>	<p style="text-align: right;">Page 189</p> <p>1 Dustin Norris</p> <p>2 answer date; correct?</p> <p>3 A Well, you're saying – you – it was</p> <p>4 before the answer date.</p> <p>5 Q Pardon me?</p> <p>6 A The answer date being when we did the</p> <p>7 amended answer?</p> <p>8 Q No. Let me ask the question again.</p> <p>9 A Yes, please. Sorry.</p> <p>10 Q Can you identify any document in the</p> <p>11 world, other than the JPEG documents, that support</p> <p>12 or corroborate the defense of mutual mistake that</p> <p>13 was created before March 1st, 2021?</p> <p>14 A I got you.</p> <p>15 The JPEG documents is the Word</p> <p>16 documents with the metadata.</p> <p>17 Q Correct.</p> <p>18 A There were emails that went between the</p> <p>19 accounting team on how to paper it up. That is in</p> <p>20 your – your documentation as well, and I would</p> <p>21 say any other document that's in the court</p> <p>22 filings.</p> <p>23 Q Can you identify them? That's kind of –</p> <p>24 that's not really helpful to me.</p> <p>25 A Yeah. I – there's the – there's an</p>



<p style="text-align: right;">Page 190</p> <p>1 Dustin Norris</p> <p>2 email – and this was used in depositions.</p> <p>3 There's an email that went – was David Klos</p> <p>4 instructing the group – or instructing Kristin to</p> <p>5 send the cash and to record a note.</p> <p>6 Q And you believe that – and it's HCMFA's</p> <p>7 contention that that document supports their</p> <p>8 position of mutual mistake. Do I have that right?</p> <p>9 A Again, I'm not an attorney, so tying the</p> <p>10 definition as little M, little M, I'm going to</p> <p>11 have to say I don't know.</p> <p>12 Q Okay. Other than the emails, the two</p> <p>13 emails that you referenced and the JPEG documents,</p> <p>14 can you identify any other document created before</p> <p>15 May 1st – March 1st, 2021, that supports or</p> <p>16 corroborates the defense of mutual mistake?</p> <p>17 A There may be a document. I – I don't</p> <p>18 know.</p> <p>19 Q Okay.</p> <p>20 A And, again, as you've seen, there's a lot</p> <p>21 of stuff that's come out in discovery, and it's</p> <p>22 important that testimony of – of those witnesses</p> <p>23 is taken into account.</p> <p>24 MR. MORRIS: Okay. Move to strike</p> <p>25 the last portion of that answer.</p>	<p style="text-align: right;">Page 191</p> <p>1 Dustin Norris</p> <p>2 Let's take a short break. I may be</p> <p>3 done. It's 4:09. Can we just come back</p> <p>4 in six minutes?</p> <p>5 THE WITNESS: Yes. Thank you.</p> <p>6 MR. RUKAVINA: Sure.</p> <p>7 MR. MORRIS: Thank you.</p> <p>8 (Recess from 3:09 p.m. to 3:19 p.m. CST)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q Just a couple more questions, Mr. Norris.</p> <p>11 If you can take a look again at</p> <p>12 Paragraph 47 of the amended answer.</p> <p>13 A Yes.</p> <p>14 Q Do you see there's also a reference to,</p> <p>15 quote, "the lack of authority from the defendant</p> <p>16 to Waterhouse," close quote?</p> <p>17 A Yes.</p> <p>18 Q HCMFA does not dispute that Mr. Waterhouse</p> <p>19 was an officer of HCMFA in May of 2019, does it?</p> <p>20 A No, we don't dispute that.</p> <p>21 Q And HCMFA doesn't dispute that</p> <p>22 Mr. Waterhouse, in fact, served as the treasurer</p> <p>23 of HCMFA in May 2019; correct?</p> <p>24 A We don't, no.</p> <p>25 Q Okay. Is the sole basis for the assertion</p>
<p style="text-align: right;">Page 192</p> <p>1 Dustin Norris</p> <p>2 that Mr. Waterhouse lacked authority was that</p> <p>3 Mr. Dondero did not specifically approve it?</p> <p>4 A By nature, just the size of this note and</p> <p>5 the nature of it would have required Mr. Dondero's</p> <p>6 authority. And both Mr. Waterhouse and</p> <p>7 Mr. Dondero testified to that in their deposition.</p> <p>8 So I'd refer you to that. They both testified he</p> <p>9 did not have the authority.</p> <p>10 MR. MORRIS: I'm not sure that he</p> <p>11 did, so I'm going to move to strike. The</p> <p>12 testimony will be what the testimony will</p> <p>13 be, not your characterization of it.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q But what about the size of the notes</p> <p>16 causes HCMFA to contend that Mr. Waterhouse didn't</p> <p>17 have authority?</p> <p>18 A A seven and a half million dollar note is</p> <p>19 large enough to rise that Jim Dondero would have,</p> <p>20 in any instance, authorized or needed to authorize</p> <p>21 this, and he did not.</p> <p>22 Q And is that because a \$7.4 million note is</p> <p>23 a substantial obligation for HCMFA?</p> <p>24 A You know, substantial – define</p> <p>25 "substantial." It's sizeable. Right? It's seven</p>	<p style="text-align: right;">Page 193</p> <p>1 Dustin Norris</p> <p>2 and a half million dollars. Overall from the</p> <p>3 operating business, it was meaningful. But seven</p> <p>4 and a half million dollars in any entity would</p> <p>5 have required Jim Dondero's approval.</p> <p>6 Q And so can you explain to me why, if it</p> <p>7 would have required his approval, nobody at HCMFA</p> <p>8 noticed that it was carried on HCMFA's books and</p> <p>9 records as a liability since May of 2019?</p> <p>10 A Yeah. I think it's a simple mistake.</p> <p>11 There were other notes of a similar nature in</p> <p>12 size. And as Mr. Dondero testified, he wasn't</p> <p>13 reviewing these regularly, the balance sheet.</p> <p>14 Frank Waterhouse was. The accounting team was.</p> <p>15 And so the HCMFA side, there was other notes of</p> <p>16 similar size and nature. It didn't occur to them</p> <p>17 that there was new notes. The accounting team, as</p> <p>18 we've – which is our position, created the notes,</p> <p>19 added the signature of Mr. Waterhouse, and then</p> <p>20 they continued to record those as liabilities on</p> <p>21 the balance sheet. And –</p> <p>22 Q Is –</p> <p>23 A – that was – you had – and, again, I'd</p> <p>24 refer you to our pleadings and our amended</p> <p>25 pleadings and the recent pleading yesterday that</p>



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1 Dustin Norris  
2 we discovered in the discovery process. But  
3 Kristin Hendrix and Dave Klos and Frank Waterhouse  
4 made it very clear what the process – and I would  
5 say why – in answer to your question, it was  
6 probably a little sloppy. It may have cut  
7 corners. They should have received Mr. Dondero's  
8 authorization, and they didn't. And so  
9 that's – that's our position.  
10 Q Does –  
11 A And I would say these are all  
12 professionals. These are good people. I don't  
13 think they were dishonest. I think they made a  
14 mistake. Professionals make mistakes, but this  
15 was a costly mistake.  
16 Q Did – does – does HCMFA contest that  
17 Frank Waterhouse knew, on May 2nd and May 3rd,  
18 2019, that the corporate accounting group was  
19 going to paper these transactions as loans?  
20 A Again, I would refer you to the actual  
21 depositions and pleadings – and our pleadings.  
22 But our position is – sorry. One more time, do  
23 you want to ask the question?  
24 Q Yeah. I think you need to – I want to  
25 try to finish up, and I really appreciate your

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1 Dustin Norris  
2 again, refer you to all the pleadings, our  
3 pleadings and depositions that – of these  
4 individuals. There's – there's a lot of support  
5 there.  
6 Q Right.  
7 Have you seen the emails from May 2nd  
8 and May 3rd?  
9 A I can't remember if they were included in  
10 your exhibits, but I know they were discussed in  
11 detail in the depositions from Dave Klos and  
12 Kristin and Frank.  
13 Q Right. Okay.  
14 MR. MORRIS: I have no further  
15 questions. This is not particularly  
16 helpful. Thanks.  
17 MR. RUKAVINA: Okay. I'll reserve  
18 questions. Thank you.  
19 MR. MORRIS: Okay. Thanks a lot.  
20 MR. RUKAVINA: Thank you.  
21 (Off the record at 3:25 p.m. CST)  
22  
23  
24  
25

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1 Dustin Norris  
2 patience.  
3 MR. RUKAVINA: And I'll just say,  
4 John, that was a bit of a confusing  
5 question.  
6 MR. MORRIS: Okay. And that's  
7 fair. Let me try again.  
8 BY MR. MORRIS:  
9 Q Does HCMFA contest that Frank Waterhouse  
10 knew, on May 2nd and May 3rd, 2019, that the  
11 corporate accounting group was going to paper the  
12 transfers from Highland as loans?  
13 A Did we contest that he knew that?  
14 Q Correct.  
15 A I think his testimony speaks – I'll refer  
16 you to his testimony. I think he testified that  
17 he didn't know, right? He didn't know that  
18 they – yes, he was copied on an email, but he  
19 didn't have any recollection that they were  
20 papered up as a loan.  
21 Q Okay. And on the basis of that testimony,  
22 does HCMFA now contend that Mr. Waterhouse didn't  
23 know, in May of 2019, that these transfers were  
24 papered as loans?  
25 A I would say that's part of it. I would,

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1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION  
4 In re: )Chapter 11  
5 )  
6 HIGHLAND CAPITAL MANAGEMENT, LP, )  
7 )Case No.  
8 Debtor. )19-34054-SGJ-11  
9 )  
10 HIGHLAND CAPITAL MANAGEMENT, LP, )  
11 )  
12 )  
13 Plaintiff, )  
14 )  
15 vs. )Advisory Proceeding No.  
16 )21-03004  
17 NEXPOINT ADVISORS, LP; JAMES )  
18 DONDERO; NANCY DONDERO; and THE )  
19 DUGABOY INVESTMENT TRUST, )  
20 )  
21 Defendants. )  
22 )  
23 REPORTER'S CERTIFICATION  
24 REMOTE DEPOSITION OF  
25 DUSTIN NORRIS  
December 1, 2021  
I, Rebecca A. Graziano, Certified Shorthand  
Reporter in and for the State of Texas, hereby  
certify to the following:  
That the witness, DUSTIN NORRIS, was duly  
sworn and that the transcript of the oral  
deposition is a true record of the testimony given  
by the witness;  
I further certify that pursuant to FRCP Rule  
30(f)(1) that the signature of the deponent:  
\_\_\_\_\_ was requested by the deponent or a  
party before the completion of the deposition and

Page 198	Page 199																																																																																										
<p>1 returned within 30 days from date of receipt of</p> <p>2 the transcript. If returned, the attached Changes</p> <p>3 and Signature Page contains any changes and the</p> <p>4 reasons therefor.</p> <p>5 _____ was not requested by the deponent or a</p> <p>6 party before the completion of the deposition.</p> <p>7 I further certify that I am neither attorney</p> <p>8 nor counsel for, related to, nor employed by any</p> <p>9 of the parties to the action in which this</p> <p>10 testimony was taken.</p> <p>11 Further, I am not a relative or employee of</p> <p>12 any attorney of record in this cause, nor do I</p> <p>13 have a financial interest in the action.</p> <p>14 Subscribed and sworn to on this 1st day of</p> <p>15 December, 2021.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 Rebecca A. Graziano, CSR, RMR, CRR</p> <p>22 Texas CSR 9306</p> <p>23 Expiration: 07/31/22</p> <p>24 California CSR 14407</p> <p>25 Expiration: 09/30/22</p> <p>Illinois CSR 084.004659</p> <p>Expiration: 05/31/23</p>	<p>1 ERRATA SHEET</p> <p>2 Case Name:</p> <p>3 Deposition Date:</p> <p>4 Deponent:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">5 Pg.</th> <th style="width: 10%;">No.</th> <th style="width: 30%;">Now Reads</th> <th style="width: 30%;">Should Read</th> <th style="width: 25%;">Reason</th> </tr> </thead> <tbody> <tr><td>6</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>7</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>8</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>9</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>10</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>11</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>12</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>13</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>14</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>21</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>22</td><td>_____</td><td>_____</td><td>_____</td><td>_____</td></tr> </tbody> </table> <p>Signature of Deponent</p> <p>SUBSCRIBED AND SWORN BEFORE ME</p> <p>23 THIS ____ DAY OF _____, 2021.</p> <p>24 _____</p> <p>25 (Notary Public) MY COMMISSION EXPIRES: _____</p>	5 Pg.	No.	Now Reads	Should Read	Reason	6	_____	_____	_____	_____	7	_____	_____	_____	_____	8	_____	_____	_____	_____	9	_____	_____	_____	_____	10	_____	_____	_____	_____	11	_____	_____	_____	_____	12	_____	_____	_____	_____	13	_____	_____	_____	_____	14	_____	_____	_____	_____	15	_____	_____	_____	_____	16	_____	_____	_____	_____	17	_____	_____	_____	_____	18	_____	_____	_____	_____	19	_____	_____	_____	_____	20	_____	_____	_____	_____	21	_____	_____	_____	_____	22	_____	_____	_____	_____
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## **EXHIBIT 19**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: ) Chapter 11  
HIGHLAND CAPITAL ) Case No.  
MANAGEMENT, LP, ) 19-34054-  
Debtor. ) sgj11  
----- )  
HIGHLAND CAPITAL )  
MANAGEMENT, LP, ) Adversary  
Plaintiff, ) Proceeding  
vs. ) No.  
 ) 21-03004  
HIGHLAND CAPITAL )  
MANAGEMENT FUND ADVISORS, )  
LP, )  
Defendant. )  
----- )

REMOTE ZOOM DEPOSITION OF DENNIS C. SAUTER

Wednesday, November 17, 2021

Reported by:

Stacey L. Daywalt

JOB NO. 202810



<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3 Wednesday, November 17, 2021</p> <p>4 1:08 p.m.</p> <p>5</p> <p>6</p> <p>7 Remote Zoom Deposition of DENNIS C.</p> <p>8 SAUTER, held before Stacey L. Daywalt, a Court</p> <p>9 Reporter and Notary Public of the District of</p> <p>10 Columbia.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2 (All appearances via remote Zoom)</p> <p>3</p> <p>4 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>5 Attorneys for Plaintiff</p> <p>6 780 Third Avenue</p> <p>7 New York, New York 10017</p> <p>8 BY: JOHN MORRIS, ESQ.</p> <p>9</p> <p>10 MUNSCH HARDT KOPF &amp; HARR</p> <p>11 Attorneys for Defendant</p> <p>12 500 North Akard Street</p> <p>13 Dallas, Texas 75201</p> <p>14 BY: DAVOR RUKAVINA, ESQ.</p> <p>15</p> <p>16 STINSON LLP</p> <p>17 Attorneys for James Dondero and Nancy</p> <p>18 Dondero</p> <p>19 3102 Oak Lawn Avenue</p> <p>20 Dallas, Texas 75219</p> <p>21 BY: MICHAEL AIGEN, ESQ.</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24</p> <p>25 LA ASIA CANTY</p>
<p style="text-align: right;">Page 4</p> <p>1 D. Sauter</p> <p>2 DENNIS C. SAUTER,</p> <p>3 called as a witness, having been</p> <p>4 duly sworn by a Notary Public, was examined and</p> <p>5 testified as follows:</p> <p>6</p> <p>7 EXAMINATION BY</p> <p>8 MR. MORRIS:</p> <p>9 Q. Can you please state your name for</p> <p>10 the record.</p> <p>11 A. Dennis Sauter.</p> <p>12 Q. Good afternoon, Mr. Sauter. My name</p> <p>13 is John Morris. I'm an attorney at Pachulski</p> <p>14 Stang Ziehl &amp; Jones. We are counsel to the</p> <p>15 reorganized Highland Capital Management, LP.</p> <p>16 Are you aware of that?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And we're here for your</p> <p>19 deposition today. Correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And I've examined you previously.</p> <p>22 Is that right?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Okay. Have you ever been deposed</p> <p>25 before?</p>	<p style="text-align: right;">Page 5</p> <p>1 D. Sauter</p> <p>2 A. I don't think so.</p> <p>3 Q. Okay. So very simple ground rules.</p> <p>4 I'm going to ask you a series of</p> <p>5 questions, and it's important that you allow me</p> <p>6 to finish my question before you begin the</p> <p>7 answer.</p> <p>8 Is that fair?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And I will certainly attempt to do</p> <p>11 the same for you and – insofar as I will</p> <p>12 attempt to allow you to finish your answer</p> <p>13 before I begin my question.</p> <p>14 But if I fail to do that, will you</p> <p>15 let me know?</p> <p>16 A. I will.</p> <p>17 Q. If there's anything that I ask you</p> <p>18 that you don't understand, will you let me know</p> <p>19 that?</p> <p>20 A. I will.</p> <p>21 Q. If you want to take a break at any</p> <p>22 time, just let me know and I'll try to</p> <p>23 accommodate you. I'd only ask that you don't</p> <p>24 ask for a break while a question is pending.</p> <p>25 Is that fair?</p>

<p style="text-align: right;">Page 6</p> <p>1 D. Sauter</p> <p>2 A. That's fair.</p> <p>3 Q. Okay. Do you have a license to</p> <p>4 practice law, sir?</p> <p>5 A. I do.</p> <p>6 Q. In what states are you admitted to</p> <p>7 practice?</p> <p>8 A. Just Texas.</p> <p>9 Q. When did you obtain your license?</p> <p>10 A. November of 2001.</p> <p>11 Q. And did you graduate from law</p> <p>12 school?</p> <p>13 A. I did.</p> <p>14 Q. Where did you graduate from law</p> <p>15 school?</p> <p>16 A. Southern Methodist University.</p> <p>17 Q. And can you describe for me your</p> <p>18 employment history from the time you graduated</p> <p>19 law school until today.</p> <p>20 A. Sure.</p> <p>21 Out of law school I began at a firm</p> <p>22 called Winstead Sechrest &amp; Minick. And I was</p> <p>23 there just till tax day, so April 15 of 2002,</p> <p>24 when my group moved to a firm at the time that</p> <p>25 was called Godwin Gruber. I was at Godwin</p>	<p style="text-align: right;">Page 7</p> <p>1 D. Sauter</p> <p>2 Gruber until 2006.</p> <p>3 And I went in-house with a</p> <p>4 development firm called St. Ives Realty. I was</p> <p>5 there until 2009.</p> <p>6 And in 2009, I went back to work</p> <p>7 with the group I'd worked with before but now</p> <p>8 it was called Langley Weinstein. I was with</p> <p>9 Langley Weinstein until December 31 of '13.</p> <p>10 And in 2014, I started at Wick</p> <p>11 Phillips Gould &amp; Martin, and I was at Wick</p> <p>12 Phillips until February of 2020 when I began at</p> <p>13 Nexpoint.</p> <p>14 Q. And while you were at Nexpoint – I</p> <p>15 mean, withdrawn.</p> <p>16 While you were at Wick Phillips, did</p> <p>17 you provide services to Highland or any of its</p> <p>18 affiliates?</p> <p>19 A. I provided services primarily to</p> <p>20 Nexpoint advisors and its wholly owned</p> <p>21 subsidiaries.</p> <p>22 I did have occasion to do a couple</p> <p>23 of discrete engagements for – I think they</p> <p>24 were CLOs but managed by Highland.</p> <p>25 Q. Prior to the time that you joined</p>
<p style="text-align: right;">Page 8</p> <p>1 D. Sauter</p> <p>2 Nexpoint, did you have any particular expertise</p> <p>3 in a specified area of the law?</p> <p>4 A. For about the last ten years, real</p> <p>5 estate.</p> <p>6 It was, before that, kind of a</p> <p>7 hybrid of construction related litigation,</p> <p>8 landlord-tenant disputes, you know,</p> <p>9 foreclosures. It was all real estate related</p> <p>10 litigation and then real estate transactional</p> <p>11 work.</p> <p>12 Q. How did you come to become employed</p> <p>13 by Nexpoint?</p> <p>14 A. I had worked with the folks here at</p> <p>15 Nexpoint for my entire tenure at Wick Phillips,</p> <p>16 and they gave me an offer and I accepted.</p> <p>17 Q. What offer did they give you? What</p> <p>18 position?</p> <p>19 A. I was hired to be general counsel of</p> <p>20 real estate.</p> <p>21 Q. Are you still the general counsel of</p> <p>22 real estate?</p> <p>23 A. I'm now the general counsel of</p> <p>24 Nexpoint.</p> <p>25 Q. When did you become the general</p>	<p style="text-align: right;">Page 9</p> <p>1 D. Sauter</p> <p>2 counsel of Nexpoint?</p> <p>3 A. I don't recall exactly, but I would</p> <p>4 say April or May of this year.</p> <p>5 Q. All right. So from approximately</p> <p>6 February of 2020 until approximately April of</p> <p>7 2021, you were the general counsel of real</p> <p>8 estate, and since approximately April of 2021</p> <p>9 you were – you have been the general counsel</p> <p>10 of Nexpoint.</p> <p>11 Do I have that right?</p> <p>12 A. Correct.</p> <p>13 Q. Was there a general counsel of</p> <p>14 Nexpoint during the time you served as general</p> <p>15 counsel of real estate?</p> <p>16 A. There was not.</p> <p>17 Generally the way things worked is</p> <p>18 Scott Ellington was general counsel at Highland</p> <p>19 Capital, and most of the legal department</p> <p>20 reported to him. I was the one attorney that</p> <p>21 was not under him.</p> <p>22 So no, there was not.</p> <p>23 Q. Okay. To whom do you report today?</p> <p>24 A. Matt McGraner.</p> <p>25 Q. And what is Mr. McGraner's title?</p>

<p style="text-align: right;">Page 10</p> <p>1 D. Sauter</p> <p>2 A. I believe it's managing director.</p> <p>3 Q. When did you begin reporting to</p> <p>4 Mr. McGraner?</p> <p>5 A. The day I was hired.</p> <p>6 Q. What are your duties and</p> <p>7 responsibilities today as the general counsel</p> <p>8 of Nexpoint?</p> <p>9 A. A lot different than I anticipated</p> <p>10 when I came on.</p> <p>11 Q. Fair.</p> <p>12 A. It's a little bit of everything. I</p> <p>13 get lots of questions from lots of different</p> <p>14 people.</p> <p>15 As you can imagine, there's been</p> <p>16 quite a shuffle with the Skyview formation,</p> <p>17 people leaving, people staying, and so, you</p> <p>18 know, it's been fairly fluid. So I try to</p> <p>19 handle whatever somebody brings me.</p> <p>20 Q. In your capacity as general counsel,</p> <p>21 do you have any responsibility for overseeing</p> <p>22 Nexpoint's litigation matters?</p> <p>23 A. I do.</p> <p>24 Q. Okay. And do you have</p> <p>25 responsibility for overseeing Nexpoint's</p>	<p style="text-align: right;">Page 11</p> <p>1 D. Sauter</p> <p>2 defense of the lawsuit that Highland has</p> <p>3 commenced against it?</p> <p>4 MR. RUKAVINA: Allow me to interject</p> <p>5 just a little bit here, John.</p> <p>6 You subpoenaed Mr. Sauter in the</p> <p>7 HCMFA lawsuit.</p> <p>8 Why are you asking him all about</p> <p>9 this Nexpoint?</p> <p>10 MR. MORRIS: Just because he told me</p> <p>11 that's where he works.</p> <p>12 MR. RUKAVINA: Yeah, that's fine.</p> <p>13 I mean, I'm not trying to be rude.</p> <p>14 Just --</p> <p>15 MR. MORRIS: I appreciate that.</p> <p>16 MR. RUKAVINA: -- if you're --</p> <p>17 (Simultaneous crosstalk.)</p> <p>18 MR. MORRIS: Duly noted. Thank you,</p> <p>19 Davor.</p> <p>20 THE REPORTER: Please watch the</p> <p>21 overlap of talking. Thank you.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Mr. Sauter, Mr. Rukavina brings up a</p> <p>24 good point.</p> <p>25 Are you also the general counsel of</p>
<p style="text-align: right;">Page 12</p> <p>1 D. Sauter</p> <p>2 Highland Capital Management Fund Advisors, LLP?</p> <p>3 A. I'm not.</p> <p>4 Q. You are not?</p> <p>5 A. I'm not the general counsel of</p> <p>6 Highland Capital Management Fund Advisors.</p> <p>7 Q. Okay. Can we refer to that entity</p> <p>8 as HCMFA today?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Do you have any title or role with</p> <p>11 HCMFA today?</p> <p>12 A. I don't have any official capacity</p> <p>13 with HCMFA, although I do perform work from</p> <p>14 time to time for HCMFA.</p> <p>15 Q. Okay. Does HCMFA have a general</p> <p>16 counsel, to the best of your knowledge?</p> <p>17 A. It does not.</p> <p>18 Q. Does HCMFA have any officers today,</p> <p>19 to the best of your knowledge?</p> <p>20 A. It does, but I'm not sure I can name</p> <p>21 them off to you.</p> <p>22 Q. Okay. What services do you provide</p> <p>23 to HCMFA?</p> <p>24 A. Again, like other affiliated</p> <p>25 entities, when it has legal needs that meet my</p>	<p style="text-align: right;">Page 13</p> <p>1 D. Sauter</p> <p>2 expertise, people bring it to me and I work on</p> <p>3 it.</p> <p>4 Q. And what's an "affiliated entity" in</p> <p>5 the way that you've used that term?</p> <p>6 A. I generally refer to HCMFA, Nexpoint</p> <p>7 Advisors and the wholly owned subsidiaries of</p> <p>8 Nexpoint Advisors as the affiliated entities.</p> <p>9 HCMFA also owns Nexpoint Securities,</p> <p>10 which is the broker dealer, and so I do work</p> <p>11 with those folks from time to time as well.</p> <p>12 Q. Is there a source of affiliation</p> <p>13 between Nexpoint and HCMFA?</p> <p>14 A. Yes, Mr. Dondero.</p> <p>15 Q. And he controls them both to the</p> <p>16 best of your knowledge. Is that right?</p> <p>17 A. I -- I guess it depends on how you</p> <p>18 define "control."</p> <p>19 But yes, he is a controlling person</p> <p>20 of Nexpoint Advisors, and yes, for all intents</p> <p>21 and purposes, he's the controlling person of</p> <p>22 HCMFA.</p> <p>23 Q. Okay. And can we refer to HCMFA and</p> <p>24 Nexpoint Advisors, LP together as "the</p> <p>25 advisors"?</p>

<p style="text-align: right;">Page 14</p> <p>1 D. Sauter</p> <p>2 A. That's fine.</p> <p>3 Q. The advisors are each advisory</p> <p>4 firms. Is that right?</p> <p>5 A. Correct.</p> <p>6 Q. And each of them provide advisory</p> <p>7 services to certain funds. Is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Do you hold any titles with</p> <p>10 any of the funds that are advised by either of</p> <p>11 the advisors?</p> <p>12 A. Yes, I am general counsel for</p> <p>13 Nexpoint Residential Trust and I'm general</p> <p>14 counsel of Nexpoint Real Estate Finance.</p> <p>15 Q. Any others?</p> <p>16 A. No, sir.</p> <p>17 Q. Okay. Do you have –</p> <p>18 A. Wait. Wait. Let me clarify.</p> <p>19 I think I am general counsel of</p> <p>20 Nexpoint Real Estate Advisors, and I may be</p> <p>21 general counsel of each of them. I think there</p> <p>22 are nine in total.</p> <p>23 Q. Okay. And are each of them separate</p> <p>24 funds?</p> <p>25 A. Each of the advisors are – manage a</p>	<p style="text-align: right;">Page 15</p> <p>1 D. Sauter</p> <p>2 discrete business line. They're separate</p> <p>3 entities, but not necessarily funds.</p> <p>4 Q. And are each of them owned</p> <p>5 indirectly or directly by Nexpoint Advisors,</p> <p>6 LP?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay.</p> <p>9 When did you first meet Mr. Dondero?</p> <p>10 A. I don't recall.</p> <p>11 I think I met him once at an event</p> <p>12 that I was invited to years ago, maybe 2017.</p> <p>13 Q. Do you know if he holds a title at</p> <p>14 HCMFA?</p> <p>15 A. I don't believe he does.</p> <p>16 Q. How about Nexpoint? Does he hold a</p> <p>17 title at Nexpoint?</p> <p>18 A. Yes, he's the president.</p> <p>19 Q. And even though he doesn't hold a</p> <p>20 title at HCMFA, it's your understanding that he</p> <p>21 controls HCMFA. Is that right?</p> <p>22 A. I don't know that I would say that.</p> <p>23 And again, I would need to look at</p> <p>24 the organizational documents.</p> <p>25 Q. Well, as – withdrawn.</p>
<p style="text-align: right;">Page 16</p> <p>1 D. Sauter</p> <p>2 Do you know if Mr. Dondero serves as</p> <p>3 the portfolio manager for any of the funds to</p> <p>4 which the advisors provide advisory services?</p> <p>5 A. He does.</p> <p>6 I don't know which ones.</p> <p>7 Q. We're going to talk in a little</p> <p>8 while about a TerreStar NAV issue.</p> <p>9 MR. MORRIS: And Stacey, that's all</p> <p>10 caps N-A-V, and it's T-E-R-R-A-S-T-A-R [sic].</p> <p>11 Q. We're going to talk a little bit</p> <p>12 about a TerreStar NAV issue.</p> <p>13 Are you generally familiar with</p> <p>14 that?</p> <p>15 A. Generally.</p> <p>16 Q. Okay. And is it your understanding</p> <p>17 that that NAV issue, that TerreStar NAV issue,</p> <p>18 related to certain equity positions that were</p> <p>19 held by certain funds managed by HCMFA?</p> <p>20 A. Yes, I think it was – Global</p> <p>21 Allocation Fund is the one that was</p> <p>22 particularly the insured.</p> <p>23 Q. And can we refer to that as GAF?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Do you know who the portfolio</p>	<p style="text-align: right;">Page 17</p> <p>1 D. Sauter</p> <p>2 manager of GAF was in 2019?</p> <p>3 A. I do not.</p> <p>4 Q. Do you know if it was Mr. Dondero?</p> <p>5 A. I do not.</p> <p>6 Q. In the course of your investigation,</p> <p>7 did you ever ask who the portfolio manager of</p> <p>8 GAF was?</p> <p>9 A. I did not.</p> <p>10 Q. Do you know Frank Waterhouse?</p> <p>11 A. I do.</p> <p>12 Q. When did you first meet</p> <p>13 Mr. Waterhouse?</p> <p>14 A. I think I met him just before I came</p> <p>15 on. It would have been maybe December of 2019.</p> <p>16 Q. Okay. Do you know if Mr. Waterhouse</p> <p>17 holds any titles with either of the advisors?</p> <p>18 A. I believe so, but I'm not exactly</p> <p>19 sure.</p> <p>20 MR. RUKAVINA: I'm going to object</p> <p>21 to vague or form there.</p> <p>22 What time are you specifying,</p> <p>23 Mr. Morris?</p> <p>24 MR. MORRIS: I appreciate that. Let</p> <p>25 me restate the question.</p>

<p style="text-align: right;">Page 18</p> <p>1 D. Sauter</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Mr. Sauter, do you know if</p> <p>4 Mr. Waterhouse held any position with either of</p> <p>5 the advisors at any time in 2019?</p> <p>6 A. I believe he did, but I – I would</p> <p>7 say it was probably treasurer and CFO, but I'm</p> <p>8 speculating.</p> <p>9 Q. In the course of your investigation,</p> <p>10 did you try to determine what title</p> <p>11 Mr. Waterhouse held with HCMFA?</p> <p>12 A. I have not.</p> <p>13 Q. Have you ever tried to determine</p> <p>14 what title Mr. Waterhouse held at HCMFA at any</p> <p>15 time?</p> <p>16 A. At one point I knew what it is. I</p> <p>17 just can't recall.</p> <p>18 Q. Okay. Does – do you know if</p> <p>19 Mr. Waterhouse holds a position with HCMFA</p> <p>20 today?</p> <p>21 A. I believe he does.</p> <p>22 Q. Do you have any understanding as to</p> <p>23 what that position is?</p> <p>24 A. Again, I think it's CFO and/or</p> <p>25 treasurer. That's consistent, I think.</p>	<p style="text-align: right;">Page 19</p> <p>1 D. Sauter</p> <p>2 Q. Do you have any understanding as to</p> <p>3 when Mr. Waterhouse became the treasurer and/or</p> <p>4 the CFO of HCMFA?</p> <p>5 A. I do not.</p> <p>6 Q. Do you know if Mr. Waterhouse holds</p> <p>7 any positions with any of the funds that are</p> <p>8 advised by either of the advisors?</p> <p>9 A. I believe he – I'm speculating. I</p> <p>10 don't know for certain.</p> <p>11 Q. During the course of your – you</p> <p>12 conducted an investigation around the TerreStar</p> <p>13 NAV issue. Right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. During the course of your</p> <p>16 investigation, did you ever try to determine</p> <p>17 whether Mr. Waterhouse served in any capacity</p> <p>18 with any of the funds that are managed by</p> <p>19 HCMFA?</p> <p>20 A. Whether he – yes.</p> <p>21 Q. And what did you – what information</p> <p>22 did you learn in the course of your</p> <p>23 investigation on that issue?</p> <p>24 A. My understanding is that the</p> <p>25 valuation team was a subset of the group that</p>
<p style="text-align: right;">Page 20</p> <p>1 D. Sauter</p> <p>2 Mr. Waterhouse ran.</p> <p>3 Q. Right.</p> <p>4 I'm asking you specifically about</p> <p>5 whether he held positions at any of the funds.</p> <p>6 Did you understand that when I asked</p> <p>7 my question?</p> <p>8 A. I don't know whether he held any</p> <p>9 position with the funds.</p> <p>10 Q. Okay. And during your</p> <p>11 investigation, did you make any effort to try</p> <p>12 to determine whether he held any positions with</p> <p>13 GAF?</p> <p>14 Let's be very specific.</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you know a gentleman named Will</p> <p>17 Mabry?</p> <p>18 A. I do.</p> <p>19 Q. And do you know if Mr. Mabry was</p> <p>20 ever employed by either of the advisors?</p> <p>21 A. I don't know who employed Mr. Mabry.</p> <p>22 Q. Do you know if he was ever employed</p> <p>23 by Highland Capital Management, LP?</p> <p>24 A. I would suspect that he was employed</p> <p>25 by Highland Capital Management, LP.</p>	<p style="text-align: right;">Page 21</p> <p>1 D. Sauter</p> <p>2 Q. Okay. And what's the basis for that</p> <p>3 speculation?</p> <p>4 A. Because he's at Skyview, and I think</p> <p>5 all of the employees that were at Nexpoint</p> <p>6 Advisors or HCMFA remained where they were.</p> <p>7 Q. Do you know what position he held at</p> <p>8 Highland in 2019, if any?</p> <p>9 A. I don't know.</p> <p>10 Q. Do you know anything about</p> <p>11 Mr. Mabry's skills or expertise, if any?</p> <p>12 A. Other than I believe he was the</p> <p>13 assistant treasurer at GAF and he was on the</p> <p>14 valuation team as well.</p> <p>15 Q. So your understanding is he was the</p> <p>16 assistant treasurer of the fund that we have</p> <p>17 defined as GAF.</p> <p>18 Do I have that right?</p> <p>19 A. That's my understanding.</p> <p>20 Q. Okay. And what's the basis for that</p> <p>21 understanding?</p> <p>22 A. That's just what I recall.</p> <p>23 Q. Okay. To the best of your</p> <p>24 knowledge, does he have an accounting</p> <p>25 background?</p>



<p style="text-align: right;">Page 22</p> <p>1 D. Sauter</p> <p>2 A. I don't know.</p> <p>3 Q. And is it your understanding that he</p> <p>4 was part of a valuation team?</p> <p>5 I think you used that term.</p> <p>6 A. Yes, I believe he was.</p> <p>7 Q. Okay. And what's the basis for that</p> <p>8 understanding on your part?</p> <p>9 A. Discussions that I've had with Frank</p> <p>10 and his knowledge of the TerreStar NAV error.</p> <p>11 Q. Did Mr. Mabry tell you that he was</p> <p>12 part of the valuation team?</p> <p>13 A. I don't recall.</p> <p>14 Q. Did you ask him?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you know if Mr. Mabry played any</p> <p>17 role in any aspect of the TerreStar</p> <p>18 investigation that was conducted by the SEC?</p> <p>19 A. I don't know.</p> <p>20 Q. Did you ask Mr. Mabry if he played</p> <p>21 any role in connection with the SEC</p> <p>22 investigation?</p> <p>23 A. I did not.</p> <p>24 Q. Do you know if Mr. Mabry played any</p> <p>25 role in formulating HCMFA's response to the</p>	<p style="text-align: right;">Page 23</p> <p>1 D. Sauter</p> <p>2 SEC?</p> <p>3 A. I do not.</p> <p>4 Q. Did you ask him?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you know when he left Highland?</p> <p>7 A. I think he was terminated with the</p> <p>8 other employees.</p> <p>9 Q. You submitted a declaration in</p> <p>10 connection with the adversary proceeding that</p> <p>11 Highland commenced against the HCMFA.</p> <p>12 Do I have that right?</p> <p>13 A. Yes, sir.</p> <p>14 Q. All right. Let's take a look at</p> <p>15 that, if we can put that up on the screen.</p> <p>16 So from time to time, my assistant</p> <p>17 Ms. Canty is going to put some documents up on</p> <p>18 the screen, Mr. Sauter. And it's very</p> <p>19 important that you understand that I will give</p> <p>20 you every opportunity that you believe you need</p> <p>21 in order to read the document.</p> <p>22 So you know, if there's something</p> <p>23 that I put up there that you want to see more</p> <p>24 of, just let me know and we'll just scroll</p> <p>25 around. Okay?</p>
<p style="text-align: right;">Page 24</p> <p>1 D. Sauter</p> <p>2 A. Okay.</p> <p>3 (Exhibit 181, Declaration of Dennis</p> <p>4 C. Sauter, Jr., previously marked for</p> <p>5 identification.)</p> <p>6 Q. Okay. Do you see the first page of</p> <p>7 this document states that it's your</p> <p>8 declaration?</p> <p>9 A. I do.</p> <p>10 Q. And if we can go to the signature</p> <p>11 line, please.</p> <p>12 And that's your signature there,</p> <p>13 sir?</p> <p>14 A. It is.</p> <p>15 Q. And did you sign this on or about</p> <p>16 May 21st, 2021?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you remember the purpose of this</p> <p>19 declaration?</p> <p>20 A. It was requesting to file an amended</p> <p>21 answer.</p> <p>22 Q. Okay. Is it fair to say that your</p> <p>23 declaration sets forth the factual basis for</p> <p>24 the proposed amendment?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 D. Sauter</p> <p>2 Q. And is it fair to say that your</p> <p>3 declaration describes the investigation that</p> <p>4 you did initially after the complaint was filed</p> <p>5 and then basically a second phase of the</p> <p>6 investigation after Mr. Waterhouse and</p> <p>7 Mr. Mabry migrated from Highland?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So the purpose of your</p> <p>10 investigation was to understand the origin of</p> <p>11 two promissory notes. Right?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. I just want to go through to</p> <p>14 the notes to make sure that the record is clear</p> <p>15 that we're talking about the same thing.</p> <p>16 There are certain documents that</p> <p>17 we've used in other depositions so they've been</p> <p>18 premarked, and I'd ask Ms. Canty to put up the</p> <p>19 document that's already been marked as</p> <p>20 Exhibit 54.</p> <p>21 MS. CANTY: Okay. John, do you want</p> <p>22 to let the court reporter know this current one</p> <p>23 is 181, premarked 181, this declaration.</p> <p>24 MR. MORRIS: Okay. Fine.</p> <p>25 (Exhibit 54, E-mail chain with</p>

<p style="text-align: right;">Page 26</p> <p>1 D. Sauter</p> <p>2 attachment dated 5/2/19, D-CNL003777-779,</p> <p>3 previously marked for identification.)</p> <p>4 Q. So if could just scroll down a</p> <p>5 little bit.</p> <p>6 Do you see there's – do you see</p> <p>7 it's – there's an e-mail from David Klos dated</p> <p>8 May 2nd?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know who Mr. Klos is?</p> <p>11 A. I do.</p> <p>12 Q. And who do you understand Mr. Klos</p> <p>13 to be? What role did he play in May of 2019?</p> <p>14 A. I don't know.</p> <p>15 I know he worked under Frank.</p> <p>16 Q. He worked out of – do you see</p> <p>17 there's an e-mail to a corporate accounting</p> <p>18 group?</p> <p>19 A. Yes.</p> <p>20 Q. Have you ever sent or received an</p> <p>21 e-mail from a Highland corporate accounting</p> <p>22 e-mail chain called the corporate accounting</p> <p>23 group?</p> <p>24 A. I've never sent an e-mail from the</p> <p>25 corporate accounting group.</p>	<p style="text-align: right;">Page 27</p> <p>1 D. Sauter</p> <p>2 I can't recall receiving one from</p> <p>3 them either.</p> <p>4 Q. Do you see that in this e-mail</p> <p>5 Mr. Klos asks to have \$2.4 million transferred</p> <p>6 from HCMLP to HCMFA?</p> <p>7 A. I do.</p> <p>8 Q. And do you see that he states:</p> <p>9 "This is a new interco loan"?</p> <p>10 A. I do.</p> <p>11 Q. And if we can see the response</p> <p>12 above, do you see how Ms. – do you know</p> <p>13 Kristin Hendrix?</p> <p>14 A. I do.</p> <p>15 Q. And who is Ms. Hendrix, to the best</p> <p>16 of your knowledge.</p> <p>17 A. I believe she worked under Mr. Klos.</p> <p>18 Q. And do you see that she wrote to</p> <p>19 someone named Blair and attached a copy of a</p> <p>20 note?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 A. That's what it says.</p> <p>24 Q. And can we go to the next page,</p> <p>25 please.</p>
<p style="text-align: right;">Page 28</p> <p>1 D. Sauter</p> <p>2 And do you see that this is a</p> <p>3 promissory note for \$2.4 million dated May 2,</p> <p>4 2019?</p> <p>5 A. I do.</p> <p>6 Q. Okay. And can we go to the</p> <p>7 signature line.</p> <p>8 Do you see Mr. Waterhouse's</p> <p>9 signature?</p> <p>10 Do you see Mr. Waterhouse's</p> <p>11 signature, sir?</p> <p>12 A. I can't verify whether that's his</p> <p>13 signature, but I'll take your word for it.</p> <p>14 Q. Okay. Can you go to the top of the</p> <p>15 note, please.</p> <p>16 Do you see that the maker is defined</p> <p>17 to be Highland Capital Management Fund</p> <p>18 Advisors, LP?</p> <p>19 A. I do see that that's what it says on</p> <p>20 the first page.</p> <p>21 Q. Okay. And this is one of the two</p> <p>22 notes that was the source of your</p> <p>23 investigation. Right? This was one of the two</p> <p>24 notes that you were investigating the origins</p> <p>25 of?</p>	<p style="text-align: right;">Page 29</p> <p>1 D. Sauter</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Let's look at the next note,</p> <p>4 please.</p> <p>5 (Exhibit 57, Promissory Note dated</p> <p>6 5/3/19, D-CNL003764-65, previously marked for</p> <p>7 identification.)</p> <p>8 Do you see this is a note for</p> <p>9 \$5 million and it's dated the next day,</p> <p>10 May 3rd, 2019?</p> <p>11 A. I see that.</p> <p>12 Q. Do you see that it's – it also</p> <p>13 defines as the maker Highland Capital</p> <p>14 Management Fund Advisors, LP?</p> <p>15 A. That's what it says on the first</p> <p>16 page, yes.</p> <p>17 Q. Okay. And if we can go to the</p> <p>18 signature line.</p> <p>19 Again, does that appear to be</p> <p>20 Mr. Waterhouse's signature?</p> <p>21 A. Again, I can't verify whether that's</p> <p>22 Mr. Waterhouse's signature or not.</p> <p>23 But it does say that the maker is</p> <p>24 Frank Waterhouse, not Highland Capital</p> <p>25 Management Fund Advisors.</p>

<p style="text-align: right;">Page 30</p> <p>1 D. Sauter</p> <p>2 Q. I understand.</p> <p>3 But the definition of "maker" is</p> <p>4 above. Correct?</p> <p>5 A. I wouldn't – that's not how I would</p> <p>6 draft a promissory note.</p> <p>7 Q. I didn't ask you how you would draft</p> <p>8 it.</p> <p>9 I'm just asking you whether, having</p> <p>10 just looked at the document and as a lawyer</p> <p>11 admitted to practice in law, would you agree</p> <p>12 that the term "maker" is a defined term in this</p> <p>13 document?</p> <p>14 MR. RUKAVINA: I'll just object to</p> <p>15 form here and also that this witness has not</p> <p>16 been called as an expert, even though he's a</p> <p>17 lawyer.</p> <p>18 So I'll just preserve that for the</p> <p>19 record.</p> <p>20 MR. MORRIS: Fair. That's fine.</p> <p>21 THE WITNESS: I would agree that</p> <p>22 "maker" is defined on the first page, but that</p> <p>23 would be an improper signature block, if it was</p> <p>24 intended to be Highland Capital Management Fund</p> <p>25 Advisors.</p>	<p style="text-align: right;">Page 31</p> <p>1 D. Sauter</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. We're going to refer to</p> <p>4 these two notes collectively as "the notes."</p> <p>5 Is that okay?</p> <p>6 A. That's fine.</p> <p>7 Q. And these are the two notes that you</p> <p>8 were investigating. Right?</p> <p>9 A. Yes.</p> <p>10 Q. And it's your understanding that</p> <p>11 these are the two notes that Highland Capital</p> <p>12 Management is suing to collect on. Right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. According to your</p> <p>15 declaration, if we can go to Paragraph 13, if</p> <p>16 we can put that back up on the screen, as part</p> <p>17 of the initial investigation – withdrawn.</p> <p>18 I'm going to use the phrase "initial</p> <p>19 investigation" to mean the investigation that</p> <p>20 you conducted between the time the complaint</p> <p>21 was filed and the time that HCMFA filed its</p> <p>22 original answer on March 1st.</p> <p>23 Is that okay?</p> <p>24 A. Sure.</p> <p>25 Q. And during that initial</p>
<p style="text-align: right;">Page 32</p> <p>1 D. Sauter</p> <p>2 investigation, you spoke with Jim Dondero.</p> <p>3 Correct?</p> <p>4 A. I did.</p> <p>5 Q. Okay. And according to</p> <p>6 Paragraph 13, he couldn't recall the genesis of</p> <p>7 the notes. Is that right?</p> <p>8 A. That's correct.</p> <p>9 Q. Did you show him the notes?</p> <p>10 A. I don't recall.</p> <p>11 Q. Did you tell him that the notes were</p> <p>12 dated May 2nd and May 3rd, 2019?</p> <p>13 A. I don't recall that either.</p> <p>14 Q. Did you do anything to try to</p> <p>15 refresh his recollection about the timing of</p> <p>16 the notes?</p> <p>17 A. I'm sure I did.</p> <p>18 But I don't recall that conversation</p> <p>19 in any detail as I'm sitting here today.</p> <p>20 Q. Did you tell him the principal</p> <p>21 amount of the notes?</p> <p>22 A. Yes.</p> <p>23 Q. And even though you told him the</p> <p>24 principal amount of the notes, he still had no</p> <p>25 recollection as to what they related to. Is</p>	<p style="text-align: right;">Page 33</p> <p>1 D. Sauter</p> <p>2 that right?</p> <p>3 A. He couldn't recall the genesis,</p> <p>4 correct.</p> <p>5 Q. Did he have any recollection at all</p> <p>6 as to what the notes related to?</p> <p>7 A. I don't – I don't believe so,</p> <p>8 because if he had, then I would have been able</p> <p>9 to pin it down further.</p> <p>10 Q. How many conversations did you have</p> <p>11 with Mr. Dondero as part of your initial</p> <p>12 investigation?</p> <p>13 A. I don't recall.</p> <p>14 Two, three.</p> <p>15 Q. Was there anybody present other than</p> <p>16 the two of you?</p> <p>17 A. Again, I don't recall.</p> <p>18 Q. Do you recall if they took place on</p> <p>19 the phone or were they in person?</p> <p>20 A. It would have been in person.</p> <p>21 Q. And why do you say it would have</p> <p>22 been in person?</p> <p>23 A. Well, now that you say that, no, it</p> <p>24 probably wasn't in person because he would not</p> <p>25 have been in the office at that time.</p>

<p style="text-align: right;">Page 34</p> <p>1 D. Sauter</p> <p>2 There was obviously a lot of things</p> <p>3 going on at this point. Mr. Dondero had been</p> <p>4 evicted from the building, and so that made –</p> <p>5 I shouldn't say evicted. He'd been kicked out</p> <p>6 by the debtor, and so that made our</p> <p>7 communications a little more difficult.</p> <p>8 So I would have spoken with him on</p> <p>9 the phone because I did not go over to the</p> <p>10 NexBank office very often.</p> <p>11 Q. Paragraph 13 says that you also</p> <p>12 spoke with "the few employees of HCMFA."</p> <p>13 Do you see that in the middle of the</p> <p>14 paragraph?</p> <p>15 A. Yes.</p> <p>16 Q. Can you identify the other CMFA</p> <p>17 employees that you spoke with as part of your</p> <p>18 initial investigation?</p> <p>19 A. I would have spoken with Dustin</p> <p>20 Norris and –</p> <p>21 Q. Do you recall speaking – I</p> <p>22 apologize for interrupting.</p> <p>23 Go ahead.</p> <p>24 A. And so he wasn't an HCMFA employee,</p> <p>25 but Jason Post.</p>	<p style="text-align: right;">Page 35</p> <p>1 D. Sauter</p> <p>2 Q. Do you have a recollection of</p> <p>3 speaking to Mr. Norris, or are you just</p> <p>4 surmising that you probably did?</p> <p>5 A. I'm surmising that I probably would</p> <p>6 have.</p> <p>7 There was a lot, again, that was</p> <p>8 happening. I didn't have the historical</p> <p>9 knowledge of these things, and so I talked with</p> <p>10 Mr. Post and Mr. Norris daily about everything</p> <p>11 that was going on just to get some background</p> <p>12 on all of the moving parts.</p> <p>13 Q. Okay. Do you know if Mr. Norris</p> <p>14 held any position with HCMFA in 2019?</p> <p>15 A. I don't – I don't know for certain.</p> <p>16 I believe he did.</p> <p>17 I can't recall what his position</p> <p>18 would have been.</p> <p>19 Q. Does he have a position with HCMFA</p> <p>20 today, to the best of your knowledge?</p> <p>21 A. I believe he does.</p> <p>22 Q. And what do you understand his</p> <p>23 position to be?</p> <p>24 A. I would say vice president.</p> <p>25 Q. Do you know when he became vice</p>
<p style="text-align: right;">Page 36</p> <p>1 D. Sauter</p> <p>2 president of HCMFA?</p> <p>3 A. I do not.</p> <p>4 Q. Do you know if he was vice president</p> <p>5 of HCMFA in October 2020?</p> <p>6 A. I do not.</p> <p>7 Q. Do you know if Mr. Norris holds any</p> <p>8 positions with DAF – I'm sorry.</p> <p>9 Do you know if Mr. Norris holds any</p> <p>10 positions with GAF?</p> <p>11 A. I don't know.</p> <p>12 Q. How about Mr. Post? Do you know if</p> <p>13 Mr. Post held any positions with HCMFA in 2019?</p> <p>14 A. I don't.</p> <p>15 Q. Do you know if he holds any</p> <p>16 positions with HCMFA today?</p> <p>17 A. He does not.</p> <p>18 Q. Is Mr. Post a compliance officer, to</p> <p>19 the best of your knowledge?</p> <p>20 A. He was.</p> <p>21 He left a week ago to take another</p> <p>22 job.</p> <p>23 Q. So he was – and who did he – for</p> <p>24 whom did he serve as the chief compliance</p> <p>25 officer until a week ago?</p>	<p style="text-align: right;">Page 37</p> <p>1 D. Sauter</p> <p>2 A. He was chief compliance officer for</p> <p>3 Nexpoint Advisors.</p> <p>4 He may have been the chief</p> <p>5 compliance officer for HCMFA as well.</p> <p>6 Q. Okay.</p> <p>7 A. And if I had to guess, he would have</p> <p>8 had those same positions back in 2019 –</p> <p>9 Q. Okay.</p> <p>10 A. – because Thomas Surgent was the</p> <p>11 chief compliance officer for HCMFA and Jason</p> <p>12 worked under him.</p> <p>13 And I think that started sometime in</p> <p>14 2014, maybe earlier.</p> <p>15 Q. And did Mr. Norris and Mr. Post tell</p> <p>16 you during your initial investigation that they</p> <p>17 had no knowledge of the notes?</p> <p>18 A. Yeah, generally I don't think that</p> <p>19 they were aware of the notes, or I should say</p> <p>20 they weren't aware of the genesis of the notes.</p> <p>21 Q. Were they aware of the existence of</p> <p>22 the notes?</p> <p>23 A. They were.</p> <p>24 Q. Did they tell you when they had</p> <p>25 learned of the existence of the notes?</p>

<p style="text-align: right;">Page 38</p> <p>1 D. Sauter</p> <p>2 A. I think it's something that I raised</p> <p>3 to them because I didn't know where the notes</p> <p>4 had come from.</p> <p>5 Q. Right.</p> <p>6 And they told you that they were</p> <p>7 aware of the notes but they didn't know the</p> <p>8 genesis of them?</p> <p>9 A. I don't recall whether they were</p> <p>10 aware of the notes before I asked about them.</p> <p>11 Q. Did you ask them if they were aware</p> <p>12 of the notes prior to the time you showed it to</p> <p>13 them?</p> <p>14 A. I would have asked them what the</p> <p>15 notes were about.</p> <p>16 Q. I don't want to know what you would</p> <p>17 have done.</p> <p>18 I know this is hard, Mr. Sauter.</p> <p>19 I'm really just asking you to search your</p> <p>20 memory.</p> <p>21 Do you recall asking them whether</p> <p>22 they were aware of the existence of the notes</p> <p>23 prior to your conversation with them?</p> <p>24 A. I don't recall if I asked whether</p> <p>25 they were aware of the existence of the notes</p>	<p style="text-align: right;">Page 39</p> <p>1 D. Sauter</p> <p>2 prior to my conversation with them.</p> <p>3 Q. Now, Paragraph 13 says that</p> <p>4 Mr. Dondero could not recall the genesis of the</p> <p>5 notes.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Did Mr. Dondero indicate to you that</p> <p>9 he was aware of the existence of the notes even</p> <p>10 though he couldn't recall the genesis of the</p> <p>11 notes?</p> <p>12 A. That's not how I would characterize</p> <p>13 it, but...</p> <p>14 Q. How would you characterize it?</p> <p>15 A. He suggested that I talk to</p> <p>16 Mr. Waterhouse.</p> <p>17 Q. Did you ask Mr. Dondero when he</p> <p>18 first learned of the existence of the notes?</p> <p>19 A. No.</p> <p>20 Q. Did he say to you anything that</p> <p>21 caused you to believe that he was unaware of</p> <p>22 the existence of the notes prior to the</p> <p>23 commencement of the lawsuit?</p> <p>24 A. No.</p> <p>25 I guess let me clarify.</p>
<p style="text-align: right;">Page 40</p> <p>1 D. Sauter</p> <p>2 He didn't make any comments that</p> <p>3 made me think one way or the other.</p> <p>4 Q. And you didn't ask.</p> <p>5 Is that fair?</p> <p>6 A. Correct, I did not ask.</p> <p>7 Q. So you had no information as to</p> <p>8 whether or not Mr. Dondero actually knew of the</p> <p>9 existence of the notes prior to the</p> <p>10 commencement of the lawsuit.</p> <p>11 Is that fair?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Paragraph 13 also states that</p> <p>14 you reviewed limited books and records of</p> <p>15 HCMFA.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. What books and records did</p> <p>19 you review as part of your initial</p> <p>20 investigation?</p> <p>21 A. I don't recall exactly what I looked</p> <p>22 at or for.</p> <p>23 I literally had to just go onto the</p> <p>24 system and try to find anything that related to</p> <p>25 the notes so I could try to find out what they</p>	<p style="text-align: right;">Page 41</p> <p>1 D. Sauter</p> <p>2 were.</p> <p>3 Q. Did you make any effort to try to</p> <p>4 determine whether HCMFA had accounted for the</p> <p>5 notes in its books and records?</p> <p>6 A. I did not.</p> <p>7 Q. Do you know today whether HCMFA ever</p> <p>8 accounted for the notes in its books and</p> <p>9 records?</p> <p>10 A. I don't know.</p> <p>11 Q. Have you ever reviewed HCMFA's</p> <p>12 balance sheets?</p> <p>13 A. I think I have, but I don't – I</p> <p>14 can't recall exactly when.</p> <p>15 Q. Did you ever make any effort to</p> <p>16 determine whether HCMFA carried these notes on</p> <p>17 its balance sheet as liabilities?</p> <p>18 A. I did not.</p> <p>19 Q. Do you know if HCMFA ever requested</p> <p>20 an extension of time to respond to the</p> <p>21 complaint?</p> <p>22 A. I don't know, but I would assume so.</p> <p>23 Q. Okay. Do you have any knowledge of</p> <p>24 HCMFA having done so?</p> <p>25 A. No.</p>



<p style="text-align: right;">Page 42</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Do you know if – prior to</p> <p>3 the time it filed its original answer, whether</p> <p>4 HCMFA ever asked HCMLP to provide any documents</p> <p>5 in connection with the adversary proceeding?</p> <p>6 A. Say that again.</p> <p>7 Q. Sure.</p> <p>8 So HCMFA filed its answer on</p> <p>9 March 1st, according to Paragraph 12.</p> <p>10 Do I have that right?</p> <p>11 A. I believe that's right.</p> <p>12 Q. Okay. Do you know if HCMFA ever</p> <p>13 asked Highland for any documents before it</p> <p>14 filed its answer?</p> <p>15 A. I don't recall.</p> <p>16 Q. So at the time HCMFA filed its</p> <p>17 answer, Mr. Dondero couldn't recall the genesis</p> <p>18 of the notes. Correct?</p> <p>19 A. That's right.</p> <p>20 Q. And neither Mr. Post nor Mr. Norris</p> <p>21 could recall the genesis of the notes.</p> <p>22 Correct?</p> <p>23 A. Correct.</p> <p>24 Q. And HCMFA had limited access to</p> <p>25 books and records. Correct?</p>	<p style="text-align: right;">Page 43</p> <p>1 D. Sauter</p> <p>2 A. Correct.</p> <p>3 Q. And HCMFA had no access to the</p> <p>4 debtor's employees who had provided services to</p> <p>5 HCMFA under shared services agreements.</p> <p>6 Correct?</p> <p>7 A. I think our view was it was</p> <p>8 potentially improper to reach out to those</p> <p>9 employees on a matter that was adverse to</p> <p>10 HCMLP, and so we refrained from doing so.</p> <p>11 Q. Okay. And so under those</p> <p>12 circumstances, HCMFA nevertheless filed an</p> <p>13 answer that asserted no affirmative defenses.</p> <p>14 Correct?</p> <p>15 A. Yes.</p> <p>16 Q. But this situation changed in</p> <p>17 mid-April 2001. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. If we can scroll down to</p> <p>20 Paragraph 19.</p> <p>21 (Discussion was held off the</p> <p>22 record.)</p> <p>23 Q. So in April 2001, the situation</p> <p>24 changed because Mr. Waterhouse and other former</p> <p>25 employees of Highland had migrated over to</p>
<p style="text-align: right;">Page 44</p> <p>1 D. Sauter</p> <p>2 Skyview so that you had access to them. Is</p> <p>3 that right?</p> <p>4 A. Correct.</p> <p>5 Q. And that's when you conducted the</p> <p>6 second phase of your investigation. Correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you'll see at the end of Page 4</p> <p>9 you reference that the debtor had provided</p> <p>10 access to HCMFA of much of its books and</p> <p>11 records.</p> <p>12 Do I have that right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And what books and records</p> <p>15 did Highland provide between March 1st and</p> <p>16 mid-April when you conducted the second phase</p> <p>17 of your investigation?</p> <p>18 Are there any particular books and</p> <p>19 records that you're referring to in that</p> <p>20 sentence?</p> <p>21 A. I can't recall exactly what it was.</p> <p>22 There was a process that we were</p> <p>23 going through that I think – if you'll recall,</p> <p>24 that we went back and forth on obtaining access</p> <p>25 to books and records, submitting written</p>	<p style="text-align: right;">Page 45</p> <p>1 D. Sauter</p> <p>2 requests, and those were either granted or</p> <p>3 denied. And so there were a litany of</p> <p>4 documents that were sent over.</p> <p>5 Q. Can you identify any documents that</p> <p>6 you reviewed as part of either the initial</p> <p>7 investigation or the follow-up investigation in</p> <p>8 April 2021?</p> <p>9 A. Yes.</p> <p>10 I would have reviewed documents</p> <p>11 related to the TerreStar NAV error.</p> <p>12 Q. And can you describe what those</p> <p>13 documents are.</p> <p>14 A. Memos.</p> <p>15 Q. Okay. Do you recall how many memos</p> <p>16 you reviewed that concerned the TerreStar NAV</p> <p>17 issue?</p> <p>18 A. I want to say that there were three,</p> <p>19 four or five, something along those lines.</p> <p>20 I think there was a memo that was</p> <p>21 submitted to the board and then maybe some</p> <p>22 communications with the SEC.</p> <p>23 Q. And is it your testimony that HCMFA</p> <p>24 did not have those memos until after March 1st,</p> <p>25 2021?</p>

<p style="text-align: right;">Page 46</p> <p>1 D. Sauter</p> <p>2 A. I don't know whether we had access</p> <p>3 to those memos, but I didn't – I wasn't able</p> <p>4 to speak to Frank Waterhouse, and so I didn't</p> <p>5 know to look for them.</p> <p>6 Q. And neither Mr. Dondero nor</p> <p>7 Mr. Norris nor Mr. Post thought to inform you</p> <p>8 about the NAV star error [sic] because they had</p> <p>9 no idea what the notes related to. Correct?</p> <p>10 A. That's my recollection. That's</p> <p>11 correct.</p> <p>12 Q. Okay. Other than the three to five</p> <p>13 memos that you've just described, are there any</p> <p>14 other documents that you recall reviewing as</p> <p>15 part of your investigation?</p> <p>16 A. No.</p> <p>17 Q. Do you know to whom the memos that</p> <p>18 you've just described were addressed?</p> <p>19 Who were they sent to?</p> <p>20 A. I believe there was one that was</p> <p>21 sent to the board.</p> <p>22 And then the others, I think, were</p> <p>23 just either internal communications or</p> <p>24 communications with the SEC.</p> <p>25 Q. Can we scroll down to Paragraph 22,</p>	<p style="text-align: right;">Page 47</p> <p>1 D. Sauter</p> <p>2 please.</p> <p>3 Actually, look at Paragraph 21</p> <p>4 first.</p> <p>5 According to Paragraph 21, as part</p> <p>6 of the second phase of your investigation, you</p> <p>7 spoke with Mr. Waterhouse and Mr. Mabry.</p> <p>8 Correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did you speak with anybody else as</p> <p>11 part of the second phase of your investigation?</p> <p>12 A. Yes, I would have spoken with Jason</p> <p>13 Post and Dustin Norris.</p> <p>14 Q. And is it fair to say based on the</p> <p>15 second phase of your – withdrawn.</p> <p>16 Is it fair to say that your</p> <p>17 conclusions that resulted from the second phase</p> <p>18 of your investigation are set forth in</p> <p>19 Paragraph 22?</p> <p>20 A. (Reviewing document.)</p> <p>21 I wouldn't say all of my</p> <p>22 conclusions. But yes, that's some of them.</p> <p>23 Q. Okay. Is it fair to say that, based</p> <p>24 on the second phase of your investigation, you</p> <p>25 concluded, among other things, "that the notes</p>
<p style="text-align: right;">Page 48</p> <p>1 D. Sauter</p> <p>2 were signed by mistake by Waterhouse without</p> <p>3 authority from HCMFA"?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Let's talk about your</p> <p>6 discussions with Mr. Waterhouse as part of your</p> <p>7 investigation.</p> <p>8 How many times did you speak with</p> <p>9 him?</p> <p>10 A. Probably three.</p> <p>11 Q. And was anybody else present for any</p> <p>12 of the three conversations?</p> <p>13 A. I don't recall. I don't think so.</p> <p>14 Q. Did you take any notes of your</p> <p>15 conversations with Mr. Waterhouse?</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you recall whether you sent</p> <p>18 anybody any e-mails summarizing your</p> <p>19 conversations with Mr. Waterhouse?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did the three conversations take</p> <p>22 place in person, on the phone or some mix</p> <p>23 thereof?</p> <p>24 A. I think it would have been a mix</p> <p>25 thereof.</p>	<p style="text-align: right;">Page 49</p> <p>1 D. Sauter</p> <p>2 Q. Do you recall which of the three</p> <p>3 conversations was the longest, which was the</p> <p>4 shortest?</p> <p>5 I just want to get a sense of how</p> <p>6 much time you spent with Mr. Waterhouse.</p> <p>7 A. I don't, because again, there was</p> <p>8 lots going on.</p> <p>9 The first one was in the conference</p> <p>10 room on the 11th floor at NexBank. The second</p> <p>11 one was in his office. And I think the third</p> <p>12 was on a phone call.</p> <p>13 Q. Did any of them last more than ten</p> <p>14 minutes?</p> <p>15 A. I can't say for certain.</p> <p>16 I would think so, but...</p> <p>17 Q. Okay. Did you show Mr. Waterhouse</p> <p>18 either of the notes as part of either of these</p> <p>19 three interviews?</p> <p>20 A. I don't recall if I did.</p> <p>21 But he knew – he knew the notes.</p> <p>22 Q. And what did he say to you that led</p> <p>23 you to believe that he knew the notes?</p> <p>24 A. Because he was aware of the notes.</p> <p>25 I...</p>

<p style="text-align: right;">Page 50</p> <p>1 D. Sauter</p> <p>2 Q. Did he tell the circumstances</p> <p>3 surrounding the execution of the notes?</p> <p>4 A. Yes.</p> <p>5 Q. What did he tell you?</p> <p>6 A. He said those notes were executed in</p> <p>7 connection with the TerreStar NAV error.</p> <p>8 Q. During your discussions with</p> <p>9 Mr. Waterhouse, did he ever deny signing the</p> <p>10 notes?</p> <p>11 A. No.</p> <p>12 Q. He never told you that he was</p> <p>13 unaware of the existence of the notes, did he?</p> <p>14 A. No.</p> <p>15 Q. In fact, before signing your</p> <p>16 declaration, you believed Mr. Waterhouse in</p> <p>17 fact had signed the notes. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. And that's why in Paragraph 22 you</p> <p>20 specifically wrote that the notes were signed</p> <p>21 by mistake by Waterhouse. Right?</p> <p>22 A. Yes.</p> <p>23 Q. And you understood at the time you</p> <p>24 signed your declaration that Mr. Waterhouse had</p> <p>25 signed the notes at a time when he was HCMFA's</p>	<p style="text-align: right;">Page 51</p> <p>1 D. Sauter</p> <p>2 chief financial officer. Correct?</p> <p>3 A. I don't think I said that, but that</p> <p>4 would have been my assumption.</p> <p>5 Q. Okay. I think if we can – give me</p> <p>6 just one moment. I think I...</p> <p>7 Can we go to Paragraph 29, please.</p> <p>8 You'll see, according to your</p> <p>9 declaration, it says: "Returning to the notes,</p> <p>10 Waterhouse was the chief financial officer of</p> <p>11 both the debtor and the HCMFA during the above</p> <p>12 events and at the time he signed the notes."</p> <p>13 Have I read that correctly?</p> <p>14 A. You did.</p> <p>15 Q. Does that refresh your recollection</p> <p>16 that at the time you signed this declaration</p> <p>17 you believed that Mr. Waterhouse was HCMFA's</p> <p>18 CFO at the time he signed the notes?</p> <p>19 A. It does.</p> <p>20 Q. Okay. During your investigation did</p> <p>21 Mr. Waterhouse ever tell you that he signed the</p> <p>22 notes by mistake?</p> <p>23 A. No.</p> <p>24 Q. Did you ever ask Mr. Waterhouse</p> <p>25 during your investigation whether he signed the</p>
<p style="text-align: right;">Page 52</p> <p>1 D. Sauter</p> <p>2 notes by mistake?</p> <p>3 A. I guess I'd like to clarify that</p> <p>4 response, if I may.</p> <p>5 Q. Go right ahead.</p> <p>6 A. I asked Mr. Waterhouse why he would</p> <p>7 have signed it – the notes in his personal</p> <p>8 capacity.</p> <p>9 And his response was, I don't know,</p> <p>10 I didn't prepare them.</p> <p>11 So I don't know if that gives you</p> <p>12 the answer you're looking for, but there was</p> <p>13 some confusion about the execution of those</p> <p>14 notes.</p> <p>15 Q. Okay. Did he say anything else</p> <p>16 that – on the topic of whether signing the</p> <p>17 notes was a mistake?</p> <p>18 A. No.</p> <p>19 Q. Okay. Your declaration doesn't</p> <p>20 disclose what you just described for me.</p> <p>21 Correct?</p> <p>22 A. Not in those exact words, no.</p> <p>23 Q. Is there anything in your</p> <p>24 declaration that suggests that Mr. Waterhouse</p> <p>25 hadn't signed the notes?</p>	<p style="text-align: right;">Page 53</p> <p>1 D. Sauter</p> <p>2 A. I don't think there's anything else</p> <p>3 in my declaration from –</p> <p>4 Q. Okay. There's nothing –</p> <p>5 (Simultaneous crosstalk.)</p> <p>6 Q. I apologize.</p> <p>7 A. – from May that would suggest that</p> <p>8 Mr. Waterhouse didn't sign the notes.</p> <p>9 Q. There's nothing in here, in your</p> <p>10 declaration, that states that Mr. Waterhouse</p> <p>11 admitted that he made a mistake in signing the</p> <p>12 notes. Correct?</p> <p>13 A. Correct.</p> <p>14 Q. There's nothing in your declaration</p> <p>15 that suggests that Mr. Waterhouse in fact did</p> <p>16 not sign or did not authorize the signing of</p> <p>17 his signature to these notes. Correct?</p> <p>18 A. Correct, because he told me he did.</p> <p>19 Q. Okay. And Mr. – he told you that</p> <p>20 he had signed the notes. Correct?</p> <p>21 A. Yes.</p> <p>22 He said that he didn't use his</p> <p>23 electronic signature then, and if his signature</p> <p>24 was on them, it would have been his.</p> <p>25 Q. Okay. Mr. Waterhouse never filed</p>

<p style="text-align: right;">Page 54</p> <p>1 D. Sauter</p> <p>2 his own declaration in support of HCMFA's</p> <p>3 motion for leave to amend their answer.</p> <p>4 Correct?</p> <p>5 A. Correct.</p> <p>6 Q. During your investigation did you</p> <p>7 ask Mr. Waterhouse if he had authority to sign</p> <p>8 the notes?</p> <p>9 A. Probably not in those exact words.</p> <p>10 Q. Okay. Did you ask him in form or</p> <p>11 substance whether he was authorized to sign the</p> <p>12 notes?</p> <p>13 A. Yes.</p> <p>14 Q. And what did he say?</p> <p>15 A. I think he – well, his response was</p> <p>16 if he signed them, he was authorized to sign</p> <p>17 them.</p> <p>18 Q. Okay. And Mr. Waterhouse never told</p> <p>19 you that he signed the notes without authority.</p> <p>20 Correct?</p> <p>21 A. He told me that – I asked him if</p> <p>22 Mr. Dondero had approved the notes.</p> <p>23 And I don't think he could recall.</p> <p>24 Q. Okay. Did Mr. Waterhouse ever tell</p> <p>25 you that he signed the notes without authority?</p>	<p style="text-align: right;">Page 55</p> <p>1 D. Sauter</p> <p>2 A. No.</p> <p>3 Q. Okay. Your declaration certainly</p> <p>4 doesn't say that Mr. Waterhouse admitted</p> <p>5 signing the notes without authority. Correct?</p> <p>6 A. Correct.</p> <p>7 Q. Mr. Waterhouse never filed a</p> <p>8 declaration in this case stating that he had</p> <p>9 filed the notes without authority. Correct?</p> <p>10 A. Correct.</p> <p>11 Q. Are you aware that Mr. Waterhouse</p> <p>12 was deposed in this case?</p> <p>13 A. I'm – yes, I'm aware.</p> <p>14 Q. Have you reviewed his deposition</p> <p>15 transcript?</p> <p>16 A. I have not.</p> <p>17 Q. Has his testimony been described for</p> <p>18 you by anybody?</p> <p>19 MR. RUKAVINA: And I'll just caution</p> <p>20 you, Mr. Sauter. You know, I think that's a</p> <p>21 yes or no answer, but don't go into the</p> <p>22 substance of any discussions with me.</p> <p>23 THE WITNESS: Yes. Okay.</p> <p>24 Yes.</p> <p>25</p>
<p style="text-align: right;">Page 56</p> <p>1 D. Sauter</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. Are you aware that he</p> <p>4 testified that nobody has ever told him that he</p> <p>5 made a mistake in signing the notes?</p> <p>6 MR. RUKAVINA: Objection, form.</p> <p>7 THE WITNESS: I'm not.</p> <p>8 Q. Are you aware of anybody in the</p> <p>9 world ever telling Mr. Waterhouse that he made</p> <p>10 a mistake in signing the notes?</p> <p>11 A. Yes.</p> <p>12 Q. And who told him that?</p> <p>13 A. Me.</p> <p>14 Q. And when did you tell him that?</p> <p>15 A. When we had this discussion.</p> <p>16 Q. Okay. So it's your testimony that</p> <p>17 you actually told Mr. Waterhouse that he made a</p> <p>18 mistake in signing the notes. Right?</p> <p>19 A. I asked him who had approved these</p> <p>20 notes and what was the process.</p> <p>21 And he said he couldn't give me any</p> <p>22 process. He said the money was transferred,</p> <p>23 and so we signed the notes.</p> <p>24 Q. Okay. But did you tell him that he</p> <p>25 made a mistake?</p>	<p style="text-align: right;">Page 57</p> <p>1 D. Sauter</p> <p>2 A. I think I implied it.</p> <p>3 Q. Do you have a recollection of</p> <p>4 actually telling him that he made a mistake?</p> <p>5 A. That would be my recollection.</p> <p>6 Obviously he disagrees with it.</p> <p>7 Q. Do you know if any – and on what</p> <p>8 basis did you conclude that he made a mistake?</p> <p>9 Withdrawn.</p> <p>10 You have no personal knowledge of</p> <p>11 anything that happened in connection with the</p> <p>12 TerreStar valuation issue. Correct?</p> <p>13 A. I was not personally involved in the</p> <p>14 TerreStar valuation issue, correct.</p> <p>15 Q. You weren't involved in any of the</p> <p>16 decisions that were made in connection with the</p> <p>17 TerreStar valuation. Correct?</p> <p>18 A. Correct.</p> <p>19 Q. You weren't made – you weren't</p> <p>20 involved and had no responsibility for HCMFA's</p> <p>21 response to the SEC. Correct?</p> <p>22 A. Correct.</p> <p>23 Q. You had no responsibility or</p> <p>24 involvement in the decision as to how HCMFA was</p> <p>25 going to fund the losses to the GAF. Correct?</p>

<p style="text-align: right;">Page 58</p> <p>1 D. Sauter</p> <p>2 A. Correct.</p> <p>3 Q. You had no responsibility or</p> <p>4 involvement in how HCMFA reported to GAF.</p> <p>5 Correct?</p> <p>6 A. Correct.</p> <p>7 Q. But nevertheless, despite having no</p> <p>8 personal knowledge of those issues, you told</p> <p>9 Mr. Waterhouse or implied to Mr. Waterhouse</p> <p>10 that he made a mistake in executing the notes.</p> <p>11 Correct?</p> <p>12 A. Correct.</p> <p>13 Q. What did Mr. Waterhouse say in</p> <p>14 response?</p> <p>15 A. Not much. He just disagreed.</p> <p>16 Q. Did he just say, I disagree, and</p> <p>17 that's it or did he actually – do you recall</p> <p>18 anything specific that he said?</p> <p>19 A. I think I've already testified he</p> <p>20 said, we transferred the money, so I executed</p> <p>21 the notes. HCMFA didn't have the money to pay</p> <p>22 GAF, and so we transferred it from HCMLP and I</p> <p>23 executed the notes.</p> <p>24 Q. Okay. Your declaration doesn't</p> <p>25 attribute any specific statements to</p>	<p style="text-align: right;">Page 59</p> <p>1 D. Sauter</p> <p>2 Mr. Waterhouse, does it?</p> <p>3 A. It does not.</p> <p>4 Q. In fact, your declaration is just –</p> <p>5 withdrawn.</p> <p>6 If we can go to Paragraph 30.</p> <p>7 Take a look at Paragraph 30. We'll</p> <p>8 kind of parse it through.</p> <p>9 The first sentence says: "It</p> <p>10 appears clear that Mr. Waterhouse made a</p> <p>11 mistake."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. But again, Mr. Waterhouse never</p> <p>15 admitted to making a mistake. Correct?</p> <p>16 A. Correct.</p> <p>17 Q. And this is your – this is a</p> <p>18 conclusion that you're reaching in May of 2021,</p> <p>19 more than two years after the fact. Correct?</p> <p>20 A. Based upon my review of the</p> <p>21 documents and my discussions with Mr. Post and</p> <p>22 Mr. Norris.</p> <p>23 Q. Did you ever have any discussions</p> <p>24 with Mr. Dondero in May of 2021 as you were</p> <p>25 preparing this document?</p>
<p style="text-align: right;">Page 60</p> <p>1 D. Sauter</p> <p>2 A. Did I have any discussions with him</p> <p>3 about this?</p> <p>4 Q. I apologize. That was a bad</p> <p>5 question.</p> <p>6 Did you discuss in May of 2021 the</p> <p>7 issues concerning the notes with Mr. Dondero,</p> <p>8 or was that just part of the initial</p> <p>9 investigation?</p> <p>10 A. I don't recall.</p> <p>11 Q. And then a couple of lines down, you</p> <p>12 say – you wrote: "It appears that</p> <p>13 Mr. Waterhouse assumed incorrectly that the</p> <p>14 funds being paid by the debtor were a loan to</p> <p>15 HCMFA."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Did you ask Mr. Waterhouse if he</p> <p>19 actually made the assumption that you're</p> <p>20 attributing to him?</p> <p>21 A. Yes.</p> <p>22 Q. And did he ever admit that the</p> <p>23 assumption was incorrect?</p> <p>24 A. He did not admit that the assumption</p> <p>25 was incorrect.</p>	<p style="text-align: right;">Page 61</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Again, that's your own</p> <p>3 conclusion. Is that fair?</p> <p>4 A. That's correct.</p> <p>5 Q. And then you continue on and you</p> <p>6 write: "Third" – withdrawn.</p> <p>7 You write: "Third, it therefore</p> <p>8 appears that Mr. Waterhouse prepared the notes</p> <p>9 for some internal accounting or other purpose</p> <p>10 but without there being actual consideration</p> <p>11 for the notes and without any intention on the</p> <p>12 part of the debtor and HCMFA that there be</p> <p>13 notes or that there be a loan transaction."</p> <p>14 Have I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. So did Mr. Waterhouse tell you that</p> <p>17 he prepared the notes for some internal</p> <p>18 accounting or other purpose?</p> <p>19 A. Yes.</p> <p>20 Q. And did he tell you what the purpose</p> <p>21 of the notes was?</p> <p>22 A. Yes.</p> <p>23 He said if he transferred money he</p> <p>24 had to have a note to go with it.</p> <p>25 Q. You state in your declaration:</p>



<p style="text-align: right;">Page 62</p> <p>1 D. Sauter</p> <p>2 "There was no" – withdrawn.</p> <p>3 You state in your declaration that</p> <p>4 there was no "intention on the part of the</p> <p>5 debtor and HCMFA that there be notes or that</p> <p>6 there be a loan transaction."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. What's the basis for –</p> <p>10 MR. RUKAVINA: Object to the form.</p> <p>11 I apologize. I apologize, John.</p> <p>12 I apologize, DC.</p> <p>13 I'll just object to the form.</p> <p>14 That's not what this says.</p> <p>15 Go ahead.</p> <p>16 MR. MORRIS: Well, then let me</p> <p>17 restate it if I read it incorrectly.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Mr. Sauter, does the last sentence</p> <p>20 of your Paragraph 30 state, among other things,</p> <p>21 that the notes were prepared "without any</p> <p>22 intention on the part of the debtor and HCMFA</p> <p>23 that there be notes or that there be a loan</p> <p>24 transaction"?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 63</p> <p>1 D. Sauter</p> <p>2 Q. What's the basis for your sworn</p> <p>3 statement concerning the debtor's intentions?</p> <p>4 MR. RUKAVINA: Again, I'll object.</p> <p>5 Just so that we're clear, Mr. Sauter</p> <p>6 says "it appears that." He does not say it is</p> <p>7 a fact. He says "it appears that." There is a</p> <p>8 distinction there.</p> <p>9 MR. MORRIS: Okay. You've got your</p> <p>10 objection.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. What's the basis for your statement</p> <p>13 that it appeared the debtor had no intention</p> <p>14 that there would be notes or that there would</p> <p>15 be a loan transaction?</p> <p>16 A. If you're talking about a</p> <p>17 \$7.4 million obligation, I would assume that</p> <p>18 there would be a process internally on who was</p> <p>19 responsible for the payment of the fees for</p> <p>20 the – or the expenses for the NAV error.</p> <p>21 Based upon my discussions with Frank</p> <p>22 Waterhouse, there was no process or the legal</p> <p>23 department was not involved in making a</p> <p>24 determination as to whether there should be</p> <p>25 notes. It was merely a ministerial act that</p>
<p style="text-align: right;">Page 64</p> <p>1 D. Sauter</p> <p>2 accounting performed when they transferred the</p> <p>3 funds to pay GAF.</p> <p>4 Q. Is it your testimony as the general</p> <p>5 counsel of Nexpoint that the law department or</p> <p>6 the legal department is involved in every note</p> <p>7 that's executed by one of the Highland</p> <p>8 affiliates?</p> <p>9 MR. RUKAVINA: Object to the form.</p> <p>10 THE WITNESS: I can't answer that.</p> <p>11 Q. Okay. So other than the fact that</p> <p>12 it didn't go past the legal department, do you</p> <p>13 have any other basis for your statement that it</p> <p>14 appears that the debtor had no intention that</p> <p>15 there would be notes?</p> <p>16 A. Yes, there's an internal NAV error</p> <p>17 correction policy that obligates the</p> <p>18 responsible party to pay for it.</p> <p>19 In this case it was HCMLP that made</p> <p>20 the NAV error.</p> <p>21 Q. There's a policy that you're</p> <p>22 referring to?</p> <p>23 A. Yes.</p> <p>24 Q. And do you know when that policy was</p> <p>25 adopted?</p>	<p style="text-align: right;">Page 65</p> <p>1 D. Sauter</p> <p>2 A. I don't know for certain.</p> <p>3 But I know there was a policy in</p> <p>4 place as of 2018.</p> <p>5 Q. Okay. Other than the policy, have</p> <p>6 you ever seen any memo written – withdrawn.</p> <p>7 Have you ever seen any document in</p> <p>8 the world that states that HCMLP is responsible</p> <p>9 for the TerreStar NAV error?</p> <p>10 A. I would say the memos that</p> <p>11 acknowledged that there was a mistake.</p> <p>12 Q. And is it your recollection that the</p> <p>13 memos specifically say that HCMLP was</p> <p>14 responsible for the mistake?</p> <p>15 A. No, because the memos were vis-à-vis</p> <p>16 HCMFA and GAF.</p> <p>17 Q. Okay. So let me ask you the</p> <p>18 question again.</p> <p>19 During the course of your two</p> <p>20 investigations, did you ever see a document</p> <p>21 that stated that HCMLP was responsible for the</p> <p>22 TerreStar NAV error?</p> <p>23 A. I don't recall.</p> <p>24 Q. You don't recall seeing one. Is</p> <p>25 that correct?</p>

<p style="text-align: right;">Page 66</p> <p>1 D. Sauter</p> <p>2 A. That's correct.</p> <p>3 Q. Okay.</p> <p>4 A. Can we take a quick break?</p> <p>5 Q. Yeah, now would be perfectly fine.</p> <p>6 Give me just one second before we go</p> <p>7 off the record.</p> <p>8 So it's 2:15 local time. Can we</p> <p>9 limit it to ten minutes, Mr. Sauter?</p> <p>10 A. Yeah, that would be fine.</p> <p>11 Q. Okay. And I would ask that you're</p> <p>12 still under oath, and I would ask that you not</p> <p>13 speak with counsel or communicate with anybody</p> <p>14 about the substance of your deposition.</p> <p>15 Is that fair?</p> <p>16 MR. RUKAVINA: Don't answer that</p> <p>17 question, Mr. Sauter.</p> <p>18 The law is what it is, and we're not</p> <p>19 going to agree to something (audio issue) than</p> <p>20 the law requires.</p> <p>21 MR. MORRIS: Well, then I'm not</p> <p>22 going to take a break. How about that?</p> <p>23 Let's keep going.</p> <p>24 MR. RUKAVINA: No, we're taking a</p> <p>25 break and I'm going to the restroom.</p>	<p style="text-align: right;">Page 67</p> <p>1 D. Sauter</p> <p>2 MR. MORRIS: We're not taking a</p> <p>3 break, bud. I'm not –</p> <p>4 (Simultaneous crosstalk.)</p> <p>5 MR. RUKAVINA: We'll be back in ten</p> <p>6 minutes.</p> <p>7 MR. MORRIS: Hey, Davor, I'm going</p> <p>8 to ask your client a question. Okay?</p> <p>9 (Simultaneous crosstalk.)</p> <p>10 MR. RUKAVINA: – but we're not –</p> <p>11 I'm sorry.</p> <p>12 You can ask him afterwards who he's</p> <p>13 talked to and about what, but you don't get to</p> <p>14 tell him that he can't talk to anyone.</p> <p>15 So let's go take a piss break and be</p> <p>16 back in nine minutes.</p> <p>17 MR. MORRIS: Put that on the record.</p> <p>18 (Recess was taken from 2:17 p.m. to</p> <p>19 2:28 p.m.)</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Are you ready to proceed, Mr.</p> <p>22 Sauter?</p> <p>23 A. I am.</p> <p>24 Q. During the break did you speak to</p> <p>25 anybody about the substance of your testimony?</p>
<p style="text-align: right;">Page 68</p> <p>1 D. Sauter</p> <p>2 A. I did not.</p> <p>3 Q. Okay. Did you communicate with</p> <p>4 anybody about the substance of your testimony?</p> <p>5 A. I did not.</p> <p>6 Q. I want to stick with the focus on</p> <p>7 the debtor's intent as stated in Paragraph 30.</p> <p>8 Before you prepared your</p> <p>9 declaration, did you spend any time reviewing</p> <p>10 any of the debtor's bankruptcy filings?</p> <p>11 A. Yes.</p> <p>12 Q. And are you aware that throughout</p> <p>13 the bankruptcy the debtor disclosed these notes</p> <p>14 as assets of the estate?</p> <p>15 A. Yes.</p> <p>16 Q. And what documents did you review</p> <p>17 that led you to conclude that the debtor was</p> <p>18 disclosing the notes as assets of the estate?</p> <p>19 Do you recall?</p> <p>20 A. I mean, I would have known it from</p> <p>21 the schedules. I would have known it from your</p> <p>22 complaint.</p> <p>23 Q. Okay. So you reviewed the debtor's</p> <p>24 schedules of assets and liabilities prior to</p> <p>25 the time you signed your declaration. Is that</p>	<p style="text-align: right;">Page 69</p> <p>1 D. Sauter</p> <p>2 right?</p> <p>3 A. Well, I didn't review them in</p> <p>4 connection with my preparation of the</p> <p>5 declaration, but yes, I had reviewed them.</p> <p>6 Q. And in reviewing them, did you learn</p> <p>7 that the debtor had in fact carried the notes</p> <p>8 as assets on its balance sheet or on its</p> <p>9 schedules of assets and liabilities?</p> <p>10 MR. RUKAVINA: I'm going to object</p> <p>11 to the form.</p> <p>12 THE WITNESS: I was aware that the</p> <p>13 debtor sought to collect on the note from</p> <p>14 HCMFA, the notes.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Are you aware that Mr. Dondero was</p> <p>17 in control of Highland Capital Management, LP</p> <p>18 from at least the date of the bankruptcy filing</p> <p>19 in October 2019 through around January 9th,</p> <p>20 2020?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Are you aware that, while</p> <p>23 Mr. Dondero was in control of the debtor during</p> <p>24 that period, that Highland filed statements of</p> <p>25 financial affairs and schedules of assets?</p>

<p style="text-align: right;">Page 70</p> <p>1 D. Sauter</p> <p>2 A. Generally, I guess, yes.</p> <p>3 But I'm not aware of a particular</p> <p>4 document called statement of financial affairs.</p> <p>5 Q. Are you aware that while Mr. Dondero</p> <p>6 was in control of Highland during the</p> <p>7 bankruptcy, the debtor filed documents stating</p> <p>8 that the notes were assets of the estate?</p> <p>9 A. I was not.</p> <p>10 Q. Okay. Did you ever, as part of your</p> <p>11 investigation, try to see how the debtor</p> <p>12 treated the notes in its court filings?</p> <p>13 A. I did not, beyond the filing of the</p> <p>14 complaint.</p> <p>15 Q. So you never had a conversation with</p> <p>16 anybody – withdrawn.</p> <p>17 Did you ever ask Mr. Waterhouse how</p> <p>18 the debtor treated the notes in its books and</p> <p>19 records?</p> <p>20 A. No.</p> <p>21 Q. Did you ever ask Mr. Waterhouse how</p> <p>22 HCMFA treated the notes in its books and</p> <p>23 records?</p> <p>24 A. No.</p> <p>25 Q. Have you been following developments</p>	<p style="text-align: right;">Page 71</p> <p>1 D. Sauter</p> <p>2 in this particular adversary proceeding?</p> <p>3 A. Yes.</p> <p>4 Q. Are you aware that both HCMFA and</p> <p>5 Highland disclosed the existence of the notes</p> <p>6 to their outside auditors within 30 days of</p> <p>7 their execution?</p> <p>8 MR. RUKAVINA: Objection, form.</p> <p>9 THE WITNESS: Yes.</p> <p>10 And it's my understanding that's why</p> <p>11 the notes were prepared.</p> <p>12 Q. And what's that understanding based</p> <p>13 on?</p> <p>14 MR. RUKAVINA: And now, Mr. Sauter,</p> <p>15 let's be very careful here.</p> <p>16 Please answer only if it's based on</p> <p>17 factual information that a nonlawyer told you.</p> <p>18 THE WITNESS: Yeah. I believe</p> <p>19 Mr. Waterhouse told me that he needed a note to</p> <p>20 document the transfer of funds.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Okay. But I asked you a different</p> <p>23 question, and that's simply whether or not</p> <p>24 you're aware as you sit here today whether</p> <p>25 HCMFA and Highland disclosed the existence of</p>
<p style="text-align: right;">Page 72</p> <p>1 D. Sauter</p> <p>2 the notes to the outside auditors.</p> <p>3 MR. RUKAVINA: I'll object again.</p> <p>4 THE WITNESS: Yes, I am aware.</p> <p>5 Q. Have you ever seen HCMFA's audited</p> <p>6 financial statements?</p> <p>7 A. I don't recall.</p> <p>8 I think you asked me that earlier.</p> <p>9 And I may have seen them, but I don't recall</p> <p>10 specifically.</p> <p>11 Q. Do you recall looking at the audited</p> <p>12 financial statements as part of your</p> <p>13 investigation?</p> <p>14 A. No.</p> <p>15 Q. Let's put up HCMFA's audited</p> <p>16 financial statements for the period ending</p> <p>17 December 31st, 2018. And it's previously been</p> <p>18 marked as Deposition Exhibit 45.</p> <p>19 (Exhibit 45, Consolidated Financial</p> <p>20 Statements and Supplemental Information</p> <p>21 December 31, 2018, D-CNL002273-296, previously</p> <p>22 marked for identification.)</p> <p>23 Q. Do you see the first page there?</p> <p>24 This is the HCMFA consolidated</p> <p>25 financial statements for the period ending</p>	<p style="text-align: right;">Page 73</p> <p>1 D. Sauter</p> <p>2 December 31st, 2018.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And I think you said you may have</p> <p>6 seen it before.</p> <p>7 Did I get that wrong?</p> <p>8 A. I said I may have.</p> <p>9 In looking at this, I don't think</p> <p>10 I've ever seen this document.</p> <p>11 Q. Okay. Can we just go to the third</p> <p>12 page and see the date.</p> <p>13 Do you see that this is the report</p> <p>14 of the independent auditors</p> <p>15 PricewaterhouseCoopers?</p> <p>16 A. Yes.</p> <p>17 Q. And you do see it's dated June 3rd,</p> <p>18 2019?</p> <p>19 A. Yes.</p> <p>20 Q. And do you understand that this</p> <p>21 document was prepared by HCMFA's outside</p> <p>22 auditors prior to Highland's bankruptcy filing?</p> <p>23 A. That's what it purports to be.</p> <p>24 Q. Okay. And it also purports to have</p> <p>25 been prepared prior to the commencement of the</p>

<p style="text-align: right;">Page 74</p> <p>1 D. Sauter</p> <p>2 adversary proceeding as you understand the</p> <p>3 timing. Correct?</p> <p>4 A. Yep.</p> <p>5 Q. Let's go to Page 17, please.</p> <p>6 Do you see there's a section in the</p> <p>7 audited financial statements called Subsequent</p> <p>8 Events?</p> <p>9 A. Yep.</p> <p>10 Q. Do you have any understanding as to</p> <p>11 what a Subsequent Events section is in audited</p> <p>12 financial statements?</p> <p>13 A. Yes.</p> <p>14 Q. What's your understanding of what</p> <p>15 that section is supposed to include?</p> <p>16 A. It's intended to pick up events that</p> <p>17 occurred after the date of the financials but</p> <p>18 prior to the date the financials are</p> <p>19 executed – or issued.</p> <p>20 Q. And do you see in the second</p> <p>21 paragraph there's a description of the two</p> <p>22 notes?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. You were not aware that the</p> <p>25 two notes were included in HCMFA's audited</p>	<p style="text-align: right;">Page 75</p> <p>1 D. Sauter</p> <p>2 financial statements for – as subsequent</p> <p>3 events at the time you executed your</p> <p>4 declaration. Correct?</p> <p>5 A. Correct.</p> <p>6 Q. Now that you know that, do you think</p> <p>7 HCMFA made a mistake in including these notes</p> <p>8 in the audited financial statements, or does it</p> <p>9 cause you to reconsider your conclusion that</p> <p>10 the issuance of the notes was a mistake?</p> <p>11 MR. RUKAVINA: I'll object to that</p> <p>12 question based on form.</p> <p>13 THE WITNESS: You're asking me for</p> <p>14 my legal conclusion?</p> <p>15 Q. No, I'm not actually, but it</p> <p>16 probably wasn't a great question.</p> <p>17 So your conclusion was that the</p> <p>18 execution of the notes was a mistake. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. But HCMFA is reporting the notes as</p> <p>21 part of its audited financial statements.</p> <p>22 Correct?</p> <p>23 A. Yes.</p> <p>24 Q. And do you understand that these</p> <p>25 financial statements have been audited by</p>
<p style="text-align: right;">Page 76</p> <p>1 D. Sauter</p> <p>2 independent – an independent outside firm</p> <p>3 called PricewaterhouseCoopers?</p> <p>4 A. I assume they're audited financials.</p> <p>5 And yes, what you've shown me, it</p> <p>6 appears as though they were prepared by</p> <p>7 PricewaterhouseCoopers.</p> <p>8 Q. Okay. Would you agree with me that</p> <p>9 it's inconsistent that the notes can't be both</p> <p>10 a mistake and be reported as valid obligations</p> <p>11 in the audited financial statements?</p> <p>12 MR. RUKAVINA: I'll object.</p> <p>13 This witness is not an expert. He</p> <p>14 has no personal knowledge. This is well</p> <p>15 outside the scope of his factual investigation</p> <p>16 in May of 2021.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. You can answer, sir.</p> <p>19 A. I would agree that the two</p> <p>20 statements are at odds with one another.</p> <p>21 Q. Okay. So I'm just asking you</p> <p>22 whether – now that you know that HCMFA</p> <p>23 included these in the audited financial</p> <p>24 statements, does that cause you to question at</p> <p>25 all your conclusion that the execution of the</p>	<p style="text-align: right;">Page 77</p> <p>1 D. Sauter</p> <p>2 notes was a mistake?</p> <p>3 MR. RUKAVINA: I'll again object.</p> <p>4 This witness is not an expert. He's</p> <p>5 not going to be a trial expert. And a motion</p> <p>6 to amend has already been agreed upon and ruled</p> <p>7 upon.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. You can answer, sir.</p> <p>10 A. I would say that the audited</p> <p>11 financials were prepared by</p> <p>12 PricewaterhouseCoopers with input from the</p> <p>13 accounting team.</p> <p>14 And as I stated previously, I think</p> <p>15 there was an – a breakdown in the process that</p> <p>16 should have occurred, and had others looked at</p> <p>17 this, they wouldn't have come to the same</p> <p>18 conclusion.</p> <p>19 Q. So do you believe, based on the</p> <p>20 investigation that you did, that a second</p> <p>21 mistake occurred not only in signing the notes</p> <p>22 but including them in the audited financial</p> <p>23 statements?</p> <p>24 MR. RUKAVINA: Again, I'll object.</p> <p>25 This witness is not an expert. He</p>

<p style="text-align: right;">Page 78</p> <p>1 D. Sauter</p> <p>2 has no personal knowledge.</p> <p>3 THE WITNESS: Yeah, I can't tell you</p> <p>4 whether that's a mistake.</p> <p>5 My experience is that generally</p> <p>6 accounting folks internally said that.</p> <p>7 So if the accounting folks made a</p> <p>8 determination that the notes should be included</p> <p>9 as a subsequent event, then the auditors would</p> <p>10 include it as a subsequent event.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Do you know, is there anybody</p> <p>13 at HCMFA who's responsible for overseeing the</p> <p>14 preparation of the audited financial</p> <p>15 statements?</p> <p>16 A. I think Mr. Waterhouse.</p> <p>17 Q. When did you first learn that the</p> <p>18 notes had been included in the financial</p> <p>19 statements?</p> <p>20 Are you learning that for the first</p> <p>21 time right now or did you know that before</p> <p>22 today?</p> <p>23 A. I think I heard that a couple weeks</p> <p>24 ago.</p> <p>25 MR. RUKAVINA: Let's be careful here</p>	<p style="text-align: right;">Page 79</p> <p>1 D. Sauter</p> <p>2 again, Mr. Sauter, to exclude our</p> <p>3 communications, please.</p> <p>4 THE WITNESS: Okay.</p> <p>5 Q. Do you know if HCMFA ever reached</p> <p>6 out to PricewaterhouseCoopers to inform them</p> <p>7 that their audited financial statements were</p> <p>8 incorrect?</p> <p>9 A. I don't know.</p> <p>10 Q. Do you know whether the debtor</p> <p>11 included reference to the notes in its audited</p> <p>12 financial statements?</p> <p>13 A. I don't.</p> <p>14 Q. Let's go back to your declaration,</p> <p>15 please, Paragraph 28.</p> <p>16 Okay. So Paragraph 28 says: "The</p> <p>17 debtor accepted responsibility to HCMFA for</p> <p>18 having caused the NAV error, and the debtor</p> <p>19 ultimately, whether through insurance or its</p> <p>20 own funds, compensated HCMFA for the above</p> <p>21 payments."</p> <p>22 Have I read that correctly?</p> <p>23 A. Correct.</p> <p>24 Q. Paragraph 28 doesn't cite any source</p> <p>25 for that statement. Right?</p>
<p style="text-align: right;">Page 80</p> <p>1 D. Sauter</p> <p>2 A. Correct.</p> <p>3 Q. Okay. You don't attribute that</p> <p>4 statement to any particular person. Correct?</p> <p>5 A. That's correct.</p> <p>6 Q. What is the basis for your statement</p> <p>7 that the debtor accepted responsibility to</p> <p>8 HCMFA?</p> <p>9 A. It would be that the debtor's</p> <p>10 employees who performed the valuation function</p> <p>11 acknowledged that they had made a mistake.</p> <p>12 Q. And who are those employees?</p> <p>13 A. Well, ultimately I don't know</p> <p>14 exactly who it was that came to that</p> <p>15 determination, but I think it was Frank</p> <p>16 Waterhouse and Thomas Surgent.</p> <p>17 Q. Did you ever interview Mr. Surgent</p> <p>18 as part of your investigation?</p> <p>19 A. No, I was prohibited from speaking</p> <p>20 with him.</p> <p>21 Q. So you're not aware of</p> <p>22 Mr. Waterhouse ever saying that the debtor</p> <p>23 accepted responsibility – withdrawn.</p> <p>24 You're not aware of Mr. Surgent –</p> <p>25 withdrawn.</p>	<p style="text-align: right;">Page 81</p> <p>1 D. Sauter</p> <p>2 You have no personal knowledge that</p> <p>3 Mr. Surgent accepted, on behalf of the debtor,</p> <p>4 responsibility for the NAV error. Correct?</p> <p>5 A. I have no personal knowledge of</p> <p>6 that, correct.</p> <p>7 Q. Okay. And did Mr. Waterhouse tell</p> <p>8 you that the debtor accepted responsibility to</p> <p>9 HCMFA for having caused the NAV error?</p> <p>10 A. I think Mr. Waterhouse said that the</p> <p>11 HCMLP employees who formed the valuation</p> <p>12 committee ultimately concluded that they had</p> <p>13 made a mistake and they needed to accept that.</p> <p>14 Q. Okay. It doesn't say that in your</p> <p>15 declaration, does it?</p> <p>16 A. Doesn't say what?</p> <p>17 Q. That Mr. Waterhouse told you that.</p> <p>18 A. No.</p> <p>19 Q. In fact, is there any particular</p> <p>20 reason why you didn't share that with the</p> <p>21 court?</p> <p>22 A. No.</p> <p>23 Q. Is there anything in writing that</p> <p>24 you've ever seen which states that the debtor</p> <p>25 accepts responsibility to HCMFA for having</p>



<p style="text-align: right;">Page 82</p> <p>1 D. Sauter</p> <p>2 caused the NAV error?</p> <p>3 A. Other than what I've identified, no.</p> <p>4 Q. And what you've identified is that</p> <p>5 policy. Is that right?</p> <p>6 A. There's a policy and the</p> <p>7 acknowledgment that the NAV error was made by</p> <p>8 the HCMLP employees who were on the valuation</p> <p>9 committee.</p> <p>10 Q. Okay. You're aware that shortly</p> <p>11 after HCMFA paid the \$7.4 million to the fund,</p> <p>12 HCMFA sent the fund a written report. Is that</p> <p>13 right?</p> <p>14 A. Yes.</p> <p>15 Q. Let's take a look at that, if we can</p> <p>16 put that on the screen.</p> <p>17 MS. CANTY: Sorry, John, you went</p> <p>18 out for a second.</p> <p>19 Can you say that again.</p> <p>20 MR. MORRIS: Yeah.</p> <p>21 If you could, I think -- I think I</p> <p>22 had it listed as Exhibit 37, but it's one of</p> <p>23 the new ones. It's the memo, I think, from</p> <p>24 HCMFA to the funds.</p> <p>25 MS. CANTY: Got it.</p>	<p style="text-align: right;">Page 83</p> <p>1 D. Sauter</p> <p>2 (Exhibit 182, Memo dated 5/28/19,</p> <p>3 previously marked for identification.)</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Is this one of the memos that -- and</p> <p>6 again, Mr. Sauter, if you need to see more of</p> <p>7 it, just let me know.</p> <p>8 But is this one of the memos that</p> <p>9 you saw as part of your investigation?</p> <p>10 A. I believe so.</p> <p>11 Q. Okay. And do you understand that</p> <p>12 this is a memo from HCMFA to the board of the</p> <p>13 Highland Global Allocation Fund?</p> <p>14 A. Yes.</p> <p>15 Q. And this is where HCMFA describes</p> <p>16 for the board the resolution of the NAV error.</p> <p>17 Correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And did you discuss this memo</p> <p>20 with anybody as part of your investigation?</p> <p>21 A. I mean, other than reviewing it, no.</p> <p>22 Q. So -- and how did you obtain a copy</p> <p>23 of it?</p> <p>24 A. Mr. Post.</p> <p>25 Q. So Mr. Post gave it to you.</p>
<p style="text-align: right;">Page 84</p> <p>1 D. Sauter</p> <p>2 But you didn't speak with him about</p> <p>3 it in substance. Correct?</p> <p>4 A. I mean, I spoke to him about the</p> <p>5 transaction and the mistake.</p> <p>6 I did the same thing with Dustin</p> <p>7 Norris.</p> <p>8 Q. Okay. But you didn't speak with</p> <p>9 anybody about the substance of this memo.</p> <p>10 Correct?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And -- but you did see this</p> <p>13 memo before you signed your declaration.</p> <p>14 Correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And do you have an</p> <p>17 understanding of what this memo is?</p> <p>18 A. Yeah.</p> <p>19 I'd like to take a -- I'd like to</p> <p>20 see the memo in full.</p> <p>21 Q. Sure. Take your time.</p> <p>22 So just tell Ms. Canty when you want</p> <p>23 to see more and then she'll scroll.</p> <p>24 Okay. Stop right there.</p> <p>25 A. (Reviewing document.)</p>	<p style="text-align: right;">Page 85</p> <p>1 D. Sauter</p> <p>2 Yes. Okay.</p> <p>3 Q. So then the second page is this NAV</p> <p>4 error breakdown.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. All right. We'll come to that, but</p> <p>8 let's go back to the first page.</p> <p>9 Have you taken a look at the second</p> <p>10 paragraph there that begins: "The advisor and</p> <p>11 Houlihan Lokey, an independent third party</p> <p>12 expert valuation consultant approved by the</p> <p>13 board," have you read that paragraph?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. To the best of your</p> <p>16 knowledge, did HCMFA accurately define "NAV</p> <p>17 error" for the board in that paragraph?</p> <p>18 MR. RUKAVINA: Objection --</p> <p>19 THE WITNESS: As far as I know, yes.</p> <p>20 MR. RUKAVINA: This witness is not</p> <p>21 an expert and has no personal knowledge.</p> <p>22 Q. Do you have any reason to believe</p> <p>23 that HCMFA did not accurately describe for the</p> <p>24 board the definition of "NAV error"?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 86</p> <p>1 D. Sauter</p> <p>2 Q. Do you have any reason to believe –</p> <p>3 take a look at the last sentence.</p> <p>4 "The orderly determination and</p> <p>5 adoption of the weighted fair valuation</p> <p>6 methodology resulted in NAV errors in the</p> <p>7 fund."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And that's what's being defined as</p> <p>11 the NAV error. Correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any reason to believe</p> <p>14 that that sentence is false or misleading in</p> <p>15 any way?</p> <p>16 A. I do not.</p> <p>17 Q. Nothing you uncovered during your</p> <p>18 investigation caused you to believe that that</p> <p>19 sentence was false or misleading in any way.</p> <p>20 Correct?</p> <p>21 A. No.</p> <p>22 Q. Okay. And the advisor was the</p> <p>23 entity that made the orderly determination.</p> <p>24 Correct?</p> <p>25 A. That's what this memo says.</p>	<p style="text-align: right;">Page 87</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Who's Houlihan Lokey? Do you</p> <p>3 know who Houlihan Lokey is?</p> <p>4 A. It's a third party valuation firm.</p> <p>5 Q. Do they have a good reputation?</p> <p>6 A. Yes.</p> <p>7 Q. And did they do the valuation of</p> <p>8 TerreStar?</p> <p>9 A. That's my understanding.</p> <p>10 Q. Okay. And were they retained by the</p> <p>11 advisor or by HCMLP?</p> <p>12 A. I don't know.</p> <p>13 Q. Did you ever ask anybody who hired</p> <p>14 Houlihan Lokey?</p> <p>15 A. I did not.</p> <p>16 Q. Do you know whether HCMFA utilizes</p> <p>17 Houlihan Lokey's valuation services in the</p> <p>18 ordinary course of its business?</p> <p>19 A. I don't know.</p> <p>20 I know that Houlihan Lokey has been</p> <p>21 utilized by either HCMLP, HCMFA or Nexpoint</p> <p>22 Advisors in the past.</p> <p>23 Q. And to the best of your knowledge,</p> <p>24 has – have those entities continued to use</p> <p>25 Houlihan Lokey even after May 2019?</p>
<p style="text-align: right;">Page 88</p> <p>1 D. Sauter</p> <p>2 A. I – I don't know.</p> <p>3 Q. Do you know whether anybody ever</p> <p>4 suggested that Houlihan Lokey was responsible</p> <p>5 for the valuation error?</p> <p>6 A. I don't.</p> <p>7 Q. Did you ever ask anybody if Houlihan</p> <p>8 Lokey was responsible for the valuation error?</p> <p>9 A. No.</p> <p>10 Q. Do you know if – to the best of</p> <p>11 your knowledge, this memo was given to the</p> <p>12 board by HCMFA. Correct?</p> <p>13 A. Yes.</p> <p>14 Q. Did – having reviewed the memo, is</p> <p>15 there anything that you're aware of in this</p> <p>16 memo where HCMFA tells the board that HCMLP is</p> <p>17 responsible for the NAV error?</p> <p>18 A. No.</p> <p>19 And I don't think that they would.</p> <p>20 It would be irrelevant.</p> <p>21 MR. MORRIS: I move to strike the</p> <p>22 latter portion of the answer.</p> <p>23 Q. Let's take a look at the bottom</p> <p>24 paragraph there.</p> <p>25 Do you see that there's a reference</p>	<p style="text-align: right;">Page 89</p> <p>1 D. Sauter</p> <p>2 to two different payments?</p> <p>3 A. Yes.</p> <p>4 Q. A payment of approximately</p> <p>5 \$5.2 million was made on February 15th, 2019,</p> <p>6 and a second payment of approximately</p> <p>7 \$2.4 million was made on May 2nd.</p> <p>8 Do I have that right?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know what the source of</p> <p>11 funding was for the first payment?</p> <p>12 A. I do not.</p> <p>13 Q. Did you ever ask anybody how</p> <p>14 HCMFA – withdrawn.</p> <p>15 Did you ever ask anybody what the</p> <p>16 source of HCMFA's funding was to make the</p> <p>17 payment on February 15th, 2019?</p> <p>18 A. Say that again.</p> <p>19 Q. Did you ever ask anybody what the</p> <p>20 source of HCMFA's capital was to make that</p> <p>21 payment on February 15th?</p> <p>22 A. I was told that it was a transfer</p> <p>23 from HCMLP.</p> <p>24 Q. You were told that the transfer from</p> <p>25 HCMLP was made in February of 2019?</p>

<p style="text-align: right;">Page 90</p> <p>1 D. Sauter</p> <p>2 A. Yes.</p> <p>3 Q. Who told you that?</p> <p>4 A. Mr. Waterhouse.</p> <p>5 Q. Okay. Do you know what the source</p> <p>6 was – hold on one second.</p> <p>7 And do you know what the source of</p> <p>8 the second payment was, that \$2.4 million on</p> <p>9 May 2nd, 2019?</p> <p>10 A. HCMLP.</p> <p>11 Q. Now, we saw earlier that one of the</p> <p>12 notes was for \$2.4 million on May 2nd.</p> <p>13 Do you recall that?</p> <p>14 A. Yes. Yes.</p> <p>15 Q. Okay. So is it fair – did you</p> <p>16 conclude as part of your investigation that at</p> <p>17 least the amount and the date of the payment</p> <p>18 matched the amount and the date of the note?</p> <p>19 A. I did on the second note, yes.</p> <p>20 Q. Okay. But the – neither the amount</p> <p>21 nor the date of the first payment matched the</p> <p>22 amount or the date of the second note.</p> <p>23 Correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Let's take a look at the second</p>	<p style="text-align: right;">Page 91</p> <p>1 D. Sauter</p> <p>2 page.</p> <p>3 Have you seen this before?</p> <p>4 A. I have.</p> <p>5 Q. Did you ever have any discussions</p> <p>6 with anybody at any time during your</p> <p>7 investigation about this page?</p> <p>8 A. I did at some point, and I don't</p> <p>9 recall exactly when.</p> <p>10 Q. Okay.</p> <p>11 A. But probably it may have been after</p> <p>12 the declaration.</p> <p>13 Q. Okay. Do you understand that the</p> <p>14 first – I think it's a row – shows that the</p> <p>15 total estimated net loss resulting from the NAV</p> <p>16 error was approximately \$7.44 million?</p> <p>17 A. Yes, I see that.</p> <p>18 Q. Okay. And do you understand that</p> <p>19 this chart depicts the sources that are going</p> <p>20 to be called upon to fund the \$7.44 million</p> <p>21 payment from HCMFA to the fund?</p> <p>22 A. I – yes, I understand that now.</p> <p>23 Q. And do you understand that</p> <p>24 approximately \$5 million was going to be funded</p> <p>25 through insurance proceeds?</p>
<p style="text-align: right;">Page 92</p> <p>1 D. Sauter</p> <p>2 A. That's what it appears to show.</p> <p>3 Q. And during your investigation, were</p> <p>4 you aware that HCMFA had obtained almost</p> <p>5 \$5 million in connection with the NAV error</p> <p>6 that it was using to fund the payment to GAF?</p> <p>7 A. I subsequently learned that, yes.</p> <p>8 Q. And were you aware prior to the time</p> <p>9 that you signed your declaration – I apologize</p> <p>10 if I asked this before – withdrawn.</p> <p>11 Were you aware of the almost</p> <p>12 \$5 million in insurance proceeds that was –</p> <p>13 that were obtained by HCMFA before you signed</p> <p>14 your declaration?</p> <p>15 A. I was not.</p> <p>16 Q. So that's new information for you</p> <p>17 since the time you signed your declaration?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Were you aware at the time</p> <p>20 you signed your declaration that HCMFA had paid</p> <p>21 an insurance deductible of almost \$250,000?</p> <p>22 A. I was not.</p> <p>23 Q. Is it your understanding that after</p> <p>24 the sources described in the top portion of</p> <p>25 this page, that the total amount needed by the</p>	<p style="text-align: right;">Page 93</p> <p>1 D. Sauter</p> <p>2 advisor to make GAF whole was approximately</p> <p>3 \$2.4 million?</p> <p>4 That's the 2,398,842 number there.</p> <p>5 A. I've not done the math.</p> <p>6 Q. Well, that number there matches the</p> <p>7 number in the bottom paragraph of the first</p> <p>8 page, if we can scroll back up.</p> <p>9 A. Yeah. No, I understand.</p> <p>10 Q. Okay. So that's the total payment</p> <p>11 that was made on May 2nd, 2019, according to</p> <p>12 this memo?</p> <p>13 A. That's total payment made to GAF.</p> <p>14 What I'm unclear about is that it's</p> <p>15 the total amount out of pocket from the</p> <p>16 advisor, which may be different, but...</p> <p>17 Q. Do you know what the total out of</p> <p>18 pocket was from the advisor?</p> <p>19 A. I don't.</p> <p>20 (Simultaneous crosstalk.)</p> <p>21 THE WITNESS: – what's listed here.</p> <p>22 Q. And do you understand that a total</p> <p>23 of \$7.44 million was paid by HCMFA to GAF?</p> <p>24 A. I do.</p> <p>25 Q. Okay. And do you have any reason to</p>

<p style="text-align: right;">Page 94</p> <p>1 D. Sauter</p> <p>2 believe that the source of the funding is</p> <p>3 anything other than what's set forth on this</p> <p>4 page?</p> <p>5 A. I don't.</p> <p>6 Q. And the \$2.4 million, that's the</p> <p>7 \$2.4 million that HCMFA obtained from Highland</p> <p>8 on May 2nd. Correct?</p> <p>9 MR. RUKAVINA: Objection.</p> <p>10 The witness is not qualified to</p> <p>11 answer that.</p> <p>12 Q. During the course of your</p> <p>13 investigation, did you learn that Highland</p> <p>14 transferred \$2.4 million to HCMFA on May 2nd,</p> <p>15 2019 so that it could pay GAF?</p> <p>16 A. That's what I was told.</p> <p>17 Q. Okay. Is it your conclusion that</p> <p>18 Highland was responsible for the \$7.44 million</p> <p>19 estimated net loss resulting from the NAV</p> <p>20 error?</p> <p>21 MR. RUKAVINA: Objection.</p> <p>22 This witness is not an expert, and</p> <p>23 he has no personal knowledge.</p> <p>24 THE WITNESS: Yes, I believe that</p> <p>25 that's accurate.</p>	<p style="text-align: right;">Page 95</p> <p>1 D. Sauter</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. And that's because you believe the</p> <p>4 notes were executed by mistake. Correct?</p> <p>5 A. I believe that Highland made the NAV</p> <p>6 error and was responsible for making GAF whole,</p> <p>7 albeit vis-à-vis HCMFA, its advisor.</p> <p>8 Q. Okay. So because Highland created</p> <p>9 the NAV error, your understanding based on your</p> <p>10 discussions with Mr. Post and Mr. Norris is</p> <p>11 that Highland paid the \$7.4 million to HCMFA</p> <p>12 not as a loan but as compensation for the error</p> <p>13 that it made.</p> <p>14 Do I have that right?</p> <p>15 A. That would not be based on my</p> <p>16 discussions with Mr. Post and Mr. Norris.</p> <p>17 But yes, your conclusion is</p> <p>18 accurate.</p> <p>19 Q. Okay. And let's be really clear</p> <p>20 what the conclusion is.</p> <p>21 It's your conclusion that because</p> <p>22 Highland was negligent in making the NAV error,</p> <p>23 that when it paid \$7.4 million to HCMFA on</p> <p>24 May 2nd and May 3rd, 2019, it did so as</p> <p>25 compensation for its negligent conduct and not</p>
<p style="text-align: right;">Page 96</p> <p>1 D. Sauter</p> <p>2 as a loan. Correct?</p> <p>3 A. I didn't say negligent, and I don't</p> <p>4 know that I can make that conclusion.</p> <p>5 But it should have been indemnity</p> <p>6 and reimbursement for the error that Highland</p> <p>7 created.</p> <p>8 Q. Okay. Can you tell me why HCMFA</p> <p>9 took \$5 million from an insurance company at</p> <p>10 the same time it was being made whole by</p> <p>11 Highland?</p> <p>12 MR. RUKAVINA: I'll instruct you not</p> <p>13 to answer that.</p> <p>14 That is attorney client privileged</p> <p>15 and work product.</p> <p>16 Q. Sir, as part of your investigation,</p> <p>17 did you make any assessment as to why HCMFA</p> <p>18 accepted \$5 million in proceed – in insurance</p> <p>19 proceeds at the same time it believed that the</p> <p>20 \$7.4 million was being paid by Highland as</p> <p>21 compensation?</p> <p>22 MR. RUKAVINA: Just want to make</p> <p>23 sure, Mr. Sauter, you understand that counsel</p> <p>24 is asking about your investigation in May of</p> <p>25 this year as referenced in your declaration and</p>	<p style="text-align: right;">Page 97</p> <p>1 D. Sauter</p> <p>2 not the investigation generally.</p> <p>3 THE WITNESS: Yes.</p> <p>4 And as I said, the May declaration,</p> <p>5 I was unaware of the \$5 million in insurance</p> <p>6 payments.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Now that you're aware of it, does it</p> <p>9 cause you to question your conclusion that the</p> <p>10 payment made by Highland in May of 2019 was</p> <p>11 compensation and not a loan?</p> <p>12 MR. RUKAVINA: I instruct you not to</p> <p>13 answer that, Mr. Sauter.</p> <p>14 MR. MORRIS: On what basis? That</p> <p>15 you don't like the question?</p> <p>16 MR. RUKAVINA: No.</p> <p>17 Let's be professional here, John. I</p> <p>18 don't know why you've got to get –</p> <p>19 (Simultaneous crosstalk.)</p> <p>20 MR. MORRIS: I don't understand.</p> <p>21 It's a –</p> <p>22 MR. RUKAVINA: No, you – the way –</p> <p>23 MR. MORRIS: It's an investigation.</p> <p>24 He made a conclusion in the investigation.</p> <p>25 He's now learned a new fact. I'm</p>

<p style="text-align: right;">Page 98</p> <p>1 D. Sauter</p> <p>2 allowed to ask him if it changes his</p> <p>3 conclusion.</p> <p>4 MR. RUKAVINA: Let me just explain</p> <p>5 what I understand, what's going on here.</p> <p>6 He undertook an evidentiary and</p> <p>7 factual conclusion, which is fair game for you</p> <p>8 to ask about. Pardon me.</p> <p>9 He's told you that he didn't know</p> <p>10 about this. His declaration says – I'm</p> <p>11 paraphrasing – it appears that there was a</p> <p>12 mistake.</p> <p>13 He has never claimed to have</p> <p>14 personal knowledge. He has never claimed to be</p> <p>15 an expert. He is not going to be a trial</p> <p>16 witness. He has never testified and is not</p> <p>17 testifying today that there was a mistake.</p> <p>18 But most importantly, and why I'm</p> <p>19 instructing him not to answer, is because the</p> <p>20 issue of how this payment relates to the</p> <p>21 insurance payable, which again arose after his</p> <p>22 declaration and is something that he and I have</p> <p>23 discussed and is my work product. That is not</p> <p>24 a part of his factual investigation.</p> <p>25 So I am instructing him not to</p>	<p style="text-align: right;">Page 99</p> <p>1 D. Sauter</p> <p>2 answer. There's no point in you and I arguing</p> <p>3 about it now.</p> <p>4 If you feel my objection is</p> <p>5 inappropriate, then you have your rights</p> <p>6 intact.</p> <p>7 MR. MORRIS: All right. I'm going</p> <p>8 to continue to ask questions.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Sir, you had this document before</p> <p>11 you signed your declaration. Correct?</p> <p>12 A. I did.</p> <p>13 Q. Okay. And your conclusion was that</p> <p>14 because Highland made the NAV mistake, the</p> <p>15 \$7.4 million payment was supposed to be</p> <p>16 compensation and not in the form of a loan.</p> <p>17 Correct?</p> <p>18 MR. RUKAVINA: Objection, form.</p> <p>19 THE WITNESS: Correct.</p> <p>20 Q. Okay. And now the document that you</p> <p>21 had before you signed your declaration</p> <p>22 discloses that HCMFA received almost \$5 million</p> <p>23 as part of the insurance proceeds in connection</p> <p>24 with the NAV error. Correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 100</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Does that cause you to change</p> <p>3 the conclusion that you reached as set forth in</p> <p>4 your declaration?</p> <p>5 A. I don't know enough about the</p> <p>6 insurance proceeds, the insurance policy and</p> <p>7 what transpired at the time to make that</p> <p>8 determination.</p> <p>9 Q. Do you know if HCMFA has ever</p> <p>10 informed the insurance carrier that HCMLP was</p> <p>11 responsible for the NAV error?</p> <p>12 A. I do not.</p> <p>13 Q. Did you ever ask anybody?</p> <p>14 A. I did not.</p> <p>15 Q. As part of your investigation, did</p> <p>16 you try to determine whether HCMFA ever told</p> <p>17 the insurance company that HCMLP was</p> <p>18 responsible for the NAV error?</p> <p>19 A. I think I already said I wasn't</p> <p>20 aware of the insurance proceeds at the time of</p> <p>21 my declaration.</p> <p>22 Q. Has HCMFA returned all or any</p> <p>23 portion of the insurance proceeds to the</p> <p>24 carrier?</p> <p>25 A. I wouldn't know.</p>	<p style="text-align: right;">Page 101</p> <p>1 D. Sauter</p> <p>2 Q. Have you ever asked anybody?</p> <p>3 A. No.</p> <p>4 MR. RUKAVINA: You've got to wait a</p> <p>5 second, Mr. Sauter, before answering.</p> <p>6 Go ahead.</p> <p>7 Q. During the course of your</p> <p>8 investigation, did anybody tell you that on</p> <p>9 May 3rd, 2019, HCMFA needed another \$5 million?</p> <p>10 A. Not during the course of my initial</p> <p>11 investigation.</p> <p>12 Q. Are you aware of that today?</p> <p>13 A. I am, yes.</p> <p>14 Q. Okay. And do you understand that</p> <p>15 that \$5 million was needed in order for HCMFA</p> <p>16 to pay what's called a consent fee?</p> <p>17 MR. RUKAVINA: I'm going to object.</p> <p>18 And I'm going to instruct the</p> <p>19 witness not to answer.</p> <p>20 Again, this is attorney-client</p> <p>21 privilege and work product.</p> <p>22 He learned about all of this well</p> <p>23 after his investigation and well after his</p> <p>24 declaration.</p> <p>25 MR. MORRIS: These are facts.</p>



<p style="text-align: right;">Page 102</p> <p>1 D. Sauter</p> <p>2 I don't get it. These are facts.</p> <p>3 And I'm not limited to his declaration. He's</p> <p>4 here under a subpoena. I can ask him whatever</p> <p>5 I want factually.</p> <p>6 I don't understand, Davor.</p> <p>7 MR. RUKAVINA: Well, there's three</p> <p>8 things.</p> <p>9 You're generally right, you can ask</p> <p>10 him whatever you want factually. I'm not</p> <p>11 saying that he -- I haven't prevented you from</p> <p>12 asking factually. That's issue one.</p> <p>13 Issue two, he's not a trial witness.</p> <p>14 His role is limited to the motion to amend,</p> <p>15 which was granted by consent.</p> <p>16 And issue three, the question you're</p> <p>17 asking him right now, if he has any knowledge,</p> <p>18 he can have only through discussions with me</p> <p>19 and things he's learned through me in this</p> <p>20 litigation. He's told you he did not know</p> <p>21 about this during his investigation.</p> <p>22 So I'm going to stick by my</p> <p>23 instruction not to answer that, Mr. Sauter.</p> <p>24 MR. MORRIS: And I'm going to tell</p> <p>25 you he is a trial witness. I will certainly be</p>	<p style="text-align: right;">Page 103</p> <p>1 D. Sauter</p> <p>2 calling him at trial because he conducted an</p> <p>3 investigation.</p> <p>4 And I don't think that I need to</p> <p>5 stop asking questions as of the date of his</p> <p>6 declaration. I'm asking purely factual</p> <p>7 questions.</p> <p>8 So you know, if you want to continue</p> <p>9 to direct him not to answer, we'll deal with</p> <p>10 it, but I'm going to continue to ask him</p> <p>11 factual questions.</p> <p>12 MR. RUKAVINA: To me, this is --</p> <p>13 (Simultaneous crosstalk.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Mr. Sauter, do you understand that</p> <p>16 the \$5 million was needed by HCMFA on May 3rd,</p> <p>17 2019 to pay a consent fee?</p> <p>18 MR. RUKAVINA: I'm going to instruct</p> <p>19 you not to answer that, Mr. Sauter.</p> <p>20 Q. Are you going to follow your</p> <p>21 counsel's instructions?</p> <p>22 A. I am.</p> <p>23 Q. Do you know what a consent fee is,</p> <p>24 sir?</p> <p>25 A. I don't.</p>
<p style="text-align: right;">Page 104</p> <p>1 D. Sauter</p> <p>2 Q. Did you ever have -- withdrawn.</p> <p>3 Did anybody ever tell you that</p> <p>4 Highland was responsible for any consent fee</p> <p>5 that HCMFA paid?</p> <p>6 MR. RUKAVINA: You're instructed not</p> <p>7 to answer that to the extent that whoever told</p> <p>8 you that would be an attorney.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Okay. Did anybody other than an</p> <p>11 attorney ever tell you that Highland was</p> <p>12 responsible for any consent fee ever paid by</p> <p>13 HCMFA?</p> <p>14 A. That Highland was responsible for</p> <p>15 paying a consent fee?</p> <p>16 Q. That Highland was responsible for</p> <p>17 any consent fee that was paid by HCMFA.</p> <p>18 A. I don't believe so.</p> <p>19 Q. During your discussions as part of</p> <p>20 your investigation with Mr. Norris and Mr. Post</p> <p>21 and Mr. Dondero and Mr. Waterhouse, did anybody</p> <p>22 tell you why Highland paid HCMFA \$5 million on</p> <p>23 May 3rd, 2019?</p> <p>24 A. Yes.</p> <p>25 Q. And why did -- what did they tell</p>	<p style="text-align: right;">Page 105</p> <p>1 D. Sauter</p> <p>2 you?</p> <p>3 A. It was payment for a consent fee.</p> <p>4 Q. All right. Okay.</p> <p>5 And who told you that?</p> <p>6 A. Mr. Norris.</p> <p>7 Q. And did Mr. Norris tell you that</p> <p>8 Highland had any responsibility for the payment</p> <p>9 of that consent fee by HCMFA?</p> <p>10 A. I don't know that we got into that.</p> <p>11 Q. Okay. Did anybody else tell you</p> <p>12 that the May 3rd, 2019 \$5 million payment was</p> <p>13 made so that HCMFA could pay the consent fee?</p> <p>14 MR. RUKAVINA: Again, I'll instruct</p> <p>15 you not to answer the extent you learned</p> <p>16 anything from an attorney.</p> <p>17 THE WITNESS: I don't believe so.</p> <p>18 Q. Okay. Did you speak with</p> <p>19 Mr. Waterhouse about the \$5 million consent fee</p> <p>20 that Mr. Norris mentioned to you?</p> <p>21 A. I have not spoken with</p> <p>22 Mr. Waterhouse for quite some time about this,</p> <p>23 since he's represented by counsel.</p> <p>24 Q. No.</p> <p>25 But as part of your investigation,</p>

<p style="text-align: right;">Page 106</p> <p>1 D. Sauter</p> <p>2 after you learned from Mr. Norris that the</p> <p>3 \$5 million was paid so that HCMFA could pay the</p> <p>4 consent fee, did you follow up with</p> <p>5 Mr. Waterhouse at all?</p> <p>6 A. I didn't know about the consent fee</p> <p>7 at the time of my investigation.</p> <p>8 Q. Okay. When did Mr. Norris tell you</p> <p>9 about the consent fee?</p> <p>10 A. Probably within the last six weeks.</p> <p>11 Q. And does learning about the consent</p> <p>12 fee from Mr. Norris cause you to question your</p> <p>13 conclusion that the \$7.4 million was paid by</p> <p>14 Highland to HCMFA on account of the mistake</p> <p>15 that Highland made on the NAV error?</p> <p>16 MR. RUKAVINA: I'll again object</p> <p>17 that this witness is not an expert and he has</p> <p>18 no personal knowledge.</p> <p>19 Q. You can answer, sir.</p> <p>20 A. I wasn't aware of the consent fee.</p> <p>21 I don't know much about the consent</p> <p>22 fee. I don't know what it is, who paid it, why</p> <p>23 they paid it, what the consideration was for</p> <p>24 it.</p> <p>25 So I'm not prepared to answer that.</p>	<p style="text-align: right;">Page 107</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Let's go back to your</p> <p>3 declaration, please, Paragraph 31.</p> <p>4 Is it fair to summarize this</p> <p>5 paragraph as saying that because HCMFA and the</p> <p>6 debtor had executed that acknowledgment, that</p> <p>7 it would have been illogical for Highland to</p> <p>8 lend HCMFA \$7.4 million in May 2021?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And what was the source of</p> <p>11 your information for Paragraph 31?</p> <p>12 A. I'm not sure I follow.</p> <p>13 Q. So you've got the acknowledgment</p> <p>14 that you attached as Exhibit 4. Correct?</p> <p>15 A. Yes.</p> <p>16 Q. Did you discuss with anybody during</p> <p>17 your investigation any of the facts or</p> <p>18 conclusions that are set forth in Paragraph 31</p> <p>19 or did you – or is it based just on your</p> <p>20 review of Exhibit 4?</p> <p>21 A. Based on my review.</p> <p>22 Q. Okay. Are you aware that in</p> <p>23 May 2019, Mr. Dondero contemporaneously and</p> <p>24 personally paid Highland exactly \$7.4 million</p> <p>25 that was owed by Mr. Dondero to Highland under</p>
<p style="text-align: right;">Page 108</p> <p>1 D. Sauter</p> <p>2 a promissory note where he was the maker?</p> <p>3 A. I was not.</p> <p>4 Q. Nobody told you that as part of your</p> <p>5 investigation, that the way Highland was able</p> <p>6 to transfer the \$7.4 million to HCMFA was to</p> <p>7 get that money from Mr. Dondero on account of a</p> <p>8 note that he signed?</p> <p>9 A. No one told me that.</p> <p>10 Q. You're hearing that for the first</p> <p>11 time today?</p> <p>12 A. I am.</p> <p>13 Q. If Mr. Dondero paid down</p> <p>14 \$7.4 million in obligations that he owed to</p> <p>15 Highland, would it change your view that it was</p> <p>16 illogical for Highland to loan that money to</p> <p>17 HCMFA in May of 2019?</p> <p>18 A. Again, without seeing the documents</p> <p>19 and the timing and the details of the</p> <p>20 transaction, I can't answer that.</p> <p>21 Q. Okay. Now, the advisors have</p> <p>22 contracts with the funds they advise. Correct?</p> <p>23 A. Advisory agreements, yes.</p> <p>24 Q. And those advisory agreements are</p> <p>25 subject to annual renewal. Correct?</p>	<p style="text-align: right;">Page 109</p> <p>1 D. Sauter</p> <p>2 A. Yes.</p> <p>3 Q. As Nexpoint's general counsel, did</p> <p>4 you participate in the annual renewal process</p> <p>5 in the fall of 2020?</p> <p>6 A. I would have participated in the</p> <p>7 process, but only with respect to NXRT,</p> <p>8 Nexpoint Residential Trust and Nexpoint Real</p> <p>9 Estate Finance.</p> <p>10 Q. I see.</p> <p>11 A. I had some limited involvement in</p> <p>12 the 15(c) process with respect to Nexpoint's</p> <p>13 strategic opportunities fund, but very limited.</p> <p>14 Q. Do you know who the representative</p> <p>15 was for HCMFA who was responsible for the 15(c)</p> <p>16 annual renewal process in the fall of 2020?</p> <p>17 A. I don't.</p> <p>18 I can speculate, and I would assume</p> <p>19 it's Mr. – a combination of Mr. Norris and</p> <p>20 Mr. Sella (phonetic).</p> <p>21 Q. And why do you speculate that it's a</p> <p>22 combination of them?</p> <p>23 A. Because they were actively involved</p> <p>24 in the process just from conversations I had</p> <p>25 with them.</p>

<p style="text-align: right;">Page 110</p> <p>1 D. Sauter</p> <p>2 Q. Okay. Have you ever seen any of the</p> <p>3 reports that the advisors sent to the retail</p> <p>4 board in connection with the 15(c) annual</p> <p>5 review?</p> <p>6 MR. RUKAVINA: Now, this one,</p> <p>7 Mr. Sauter, I am going to instruct you not to</p> <p>8 answer.</p> <p>9 MR. MORRIS: Have you ever seen the</p> <p>10 document? That's what, you're going to</p> <p>11 instruct him not to –</p> <p>12 MR. RUKAVINA: Don't answer that.</p> <p>13 Don't answer that. That relates to discovery</p> <p>14 and work product privilege.</p> <p>15 The document was produced to you.</p> <p>16 Mr. Sauter helped me find that document. Other</p> <p>17 than that, nothing about that document and his</p> <p>18 knowledge is fair game.</p> <p>19 MR. MORRIS: Well, I'm going to ask</p> <p>20 my questions, and you can keep directing him</p> <p>21 not to answer.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Mr. Sauter, have you ever seen any</p> <p>24 of the reports that were issued by the advisors</p> <p>25 to the funds?</p>	<p style="text-align: right;">Page 111</p> <p>1 D. Sauter</p> <p>2 A. Could you clarify the question.</p> <p>3 Q. Sure.</p> <p>4 Have you ever seen any of the</p> <p>5 reports that were issued by the advisors to the</p> <p>6 retail board in the fall of 2020 in connection</p> <p>7 with the 15(c) review?</p> <p>8 MR. RUKAVINA: Mr. Sauter, I'm</p> <p>9 instructing you not to answer that if your</p> <p>10 answer involves working with me in this</p> <p>11 adversary proceeding.</p> <p>12 If you saw it otherwise as part of</p> <p>13 business operation, that's fine.</p> <p>14 THE WITNESS: In the fall of 2020, I</p> <p>15 would have had – I would not have been</p> <p>16 involved and I would not have seen anything</p> <p>17 sent to the board.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. All right. Well, let's put it up on</p> <p>20 the screen. It's, I think, a document that was</p> <p>21 previously marked as Deposition Exhibit 59.</p> <p>22 (Exhibit 59, Memo dated 10/23/20,</p> <p>23 HCMFAS 000025-031, marked for identification.)</p> <p>24 Q. Have you ever seen this document</p> <p>25 before, sir?</p>
<p style="text-align: right;">Page 112</p> <p>1 D. Sauter</p> <p>2 A. Could you scroll down.</p> <p>3 Q. Sure.</p> <p>4 A. (Reviewing document.)</p> <p>5 Q. We can keep going.</p> <p>6 A. All right.</p> <p>7 What's the date on this?</p> <p>8 Q. October 23rd, 2020.</p> <p>9 A. I honestly don't think I would have</p> <p>10 been involved in that or seen that.</p> <p>11 Q. Okay. Did you ever ask anybody as</p> <p>12 part of your investigation – withdrawn.</p> <p>13 Are you aware that the advisors were</p> <p>14 asked to provide information to the retail</p> <p>15 board as to the obligations that it owed to</p> <p>16 Highland and its affiliates in connection with</p> <p>17 the 15(c) annual review?</p> <p>18 A. I was not.</p> <p>19 Q. So is it fair to say that you never</p> <p>20 saw this document as part of your</p> <p>21 investigation?</p> <p>22 A. I don't think so.</p> <p>23 Q. Is it fair to say that nobody ever</p> <p>24 told you about the advisors' responses to the</p> <p>25 retail board in connection with the 15(c)</p>	<p style="text-align: right;">Page 113</p> <p>1 D. Sauter</p> <p>2 review in October of 2020?</p> <p>3 A. I think that's accurate.</p> <p>4 MR. MORRIS: We're going to do the</p> <p>5 30(b)(6) deposition on December 1st?</p> <p>6 MR. RUKAVINA: I think I'm waiting</p> <p>7 for you to confirm.</p> <p>8 I think that's what –</p> <p>9 MR. MORRIS: Let's confirm that</p> <p>10 right now.</p> <p>11 I'll send you an e-mail, but I</p> <p>12 just...</p> <p>13 MR. RUKAVINA: Okay. 10 a.m.,</p> <p>14 Dallas?</p> <p>15 MR. MORRIS: Yeah, that sounds fair.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. All right. Let's go back to your</p> <p>18 declaration, please, Paragraph 32.</p> <p>19 I'm almost done, sir.</p> <p>20 So you state, among other things,</p> <p>21 that – and I'm paraphrasing. Let me know if</p> <p>22 I – if this is fair – that as a result of</p> <p>23 your investigation in April of 2019, HCMFA now</p> <p>24 believes that it has affirmative defenses to</p> <p>25 the notes that includes the defense of mutual</p>

<p style="text-align: right;">Page 114</p> <p>1 D. Sauter</p> <p>2 mistake.</p> <p>3 Do I have that right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. What does "mutual" – excuse</p> <p>6 me – what does "mutual mistake" mean?</p> <p>7 MR. RUKAVINA: Are you asking for</p> <p>8 his legal opinion or how he used it in this</p> <p>9 declaration?</p> <p>10 MR. MORRIS: Only how he used it in</p> <p>11 the declaration.</p> <p>12 THE WITNESS: Well, wouldn't that be</p> <p>13 a legal conclusion because it's an affirmative</p> <p>14 defense?</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Well, I don't know. It's in your</p> <p>17 declaration. I'm just asking you what you</p> <p>18 meant when you used the phrase – withdrawn.</p> <p>19 Let me ask a better question. Maybe</p> <p>20 it's my fault.</p> <p>21 Mr. Sauter, what did you mean when</p> <p>22 you used the phrase "mutual mistake"?</p> <p>23 A. What I meant is that there was no</p> <p>24 analysis or consideration of what had</p> <p>25 transpired and who is legally responsible for</p>	<p style="text-align: right;">Page 115</p> <p>1 D. Sauter</p> <p>2 the payments to the fund.</p> <p>3 A transfer was made. A note was</p> <p>4 executed without any analysis.</p> <p>5 Q. And do you have anything else to add</p> <p>6 to that?</p> <p>7 A. I don't think so.</p> <p>8 Q. Okay. You also say that the notes</p> <p>9 are void for lack of consideration.</p> <p>10 Do I have that right?</p> <p>11 A. Yes.</p> <p>12 Q. You don't dispute that Highland paid</p> <p>13 HCMFA \$2.4 million on May 2nd, 2019. Correct?</p> <p>14 A. No.</p> <p>15 Q. And you don't dispute that Highland</p> <p>16 paid HCMFA \$5 million on May 3rd, 2019.</p> <p>17 Correct?</p> <p>18 A. I mean, I believe that's right.</p> <p>19 That's what I've been told.</p> <p>20 So yeah, I don't dispute that.</p> <p>21 Q. Your reference to "a lack of</p> <p>22 consideration" means only that, in your</p> <p>23 opinion, the money should not have been</p> <p>24 transferred in the form of a loan.</p> <p>25 Do I have that right?</p>
<p style="text-align: right;">Page 116</p> <p>1 D. Sauter</p> <p>2 A. You do.</p> <p>3 Q. It does not mean that HCMFA did not</p> <p>4 receive an amount of money exactly equal to the</p> <p>5 principal amount of the notes. Correct?</p> <p>6 A. Based upon what I've been told,</p> <p>7 correct.</p> <p>8 Q. Okay. You also write here that</p> <p>9 Mr. Waterhouse did not "have proper authority</p> <p>10 to sign the notes."</p> <p>11 Do I have that right?</p> <p>12 A. Yes.</p> <p>13 Q. What does "proper" – what did you</p> <p>14 mean by the phrase "proper authority"?</p> <p>15 A. I mean going through the process of</p> <p>16 what I would expect to see in making a loan of</p> <p>17 \$7.4 million.</p> <p>18 Q. So that's just your own subjective</p> <p>19 view.</p> <p>20 Is that fair?</p> <p>21 A. No.</p> <p>22 I mean, I think there's a legal</p> <p>23 basis for that, so yeah.</p> <p>24 Q. What's your legal basis for that?</p> <p>25 A. There is a process to go through in</p>	<p style="text-align: right;">Page 117</p> <p>1 D. Sauter</p> <p>2 papering a transaction like a \$7.4 million</p> <p>3 loan. And my understanding of the process, as</p> <p>4 described to me by Frank Waterhouse, was not</p> <p>5 the proper process.</p> <p>6 Q. Is there a policy or a law that</p> <p>7 requires a particular process to be followed</p> <p>8 that you're aware of?</p> <p>9 A. What I would expect is</p> <p>10 communications among the various parties that</p> <p>11 are involved and agreement that this should be</p> <p>12 a loan rather than just transferring money and</p> <p>13 sign a note.</p> <p>14 Q. You knew when you signed this</p> <p>15 declaration that Mr. Waterhouse in fact was an</p> <p>16 officer of HCMFA at the time his signature was</p> <p>17 put on the notes. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. And is it your view that an officer</p> <p>20 is not authorized to execute notes on behalf of</p> <p>21 the company for which he or she works for?</p> <p>22 A. I think every company has</p> <p>23 limitations on authority.</p> <p>24 Q. And what limits are you aware of on</p> <p>25 Mr. Waterhouse – withdrawn.</p>

<p style="text-align: right;">Page 118</p> <p>1 D. Sauter</p> <p>2 What limits are you aware of that</p> <p>3 existed on Mr. Waterhouse's authority to sign</p> <p>4 notes on behalf of HCMFA in May of 2019?</p> <p>5 A. I don't know what the HCMFA – what</p> <p>6 the partnership agreement says, or I should say</p> <p>7 the general partnership agreement says.</p> <p>8 But what I would expect is the full</p> <p>9 participation of legal, accounting and then</p> <p>10 perhaps Mr. Dondero.</p> <p>11 Q. Do you know if Mr. Waterhouse has</p> <p>12 ever signed any other notes on behalf of HCMFA</p> <p>13 or any other affiliated entity?</p> <p>14 A. I'm sure he has.</p> <p>15 Q. Did you do – as part of your</p> <p>16 investigation, before reaching your conclusion</p> <p>17 that Mr. Waterhouse didn't have proper</p> <p>18 authority, did you try to determine whether in</p> <p>19 fact he had previously issued notes on behalf</p> <p>20 of HCMFA or other affiliates?</p> <p>21 A. I can't answer your question without</p> <p>22 knowing the facts surrounding the execution of</p> <p>23 any particular note.</p> <p>24 I mean, I think it matters the</p> <p>25 amount of the note, the term of the note.</p>	<p style="text-align: right;">Page 119</p> <p>1 D. Sauter</p> <p>2 There's a number of factors that come into it.</p> <p>3 Q. But you didn't –</p> <p>4 A. So –</p> <p>5 Q. But you made no inquiry as to any of</p> <p>6 those issues. Correct?</p> <p>7 A. I made an inquiry of Mr. Waterhouse</p> <p>8 as it relates to this transaction.</p> <p>9 Q. Okay. And again, Mr. Waterhouse did</p> <p>10 not admit that he was not authorized to sign</p> <p>11 these notes. Correct?</p> <p>12 A. Sorry. He did not admit that he was</p> <p>13 not authorized to sign the notes, correct.</p> <p>14 Q. Okay.</p> <p>15 MR. MORRIS: Let's just take a</p> <p>16 five-minute break. I may be done.</p> <p>17 It's 4:28. Let's just come back at</p> <p>18 4:35 so I can take a break.</p> <p>19 (Recess was taken from 3:29 p.m. to</p> <p>20 3:37 p.m.)</p> <p>21 MR. MORRIS: Mr. Sauter, I greatly</p> <p>22 appreciate your time and attention today. I</p> <p>23 have no further questions.</p> <p>24 THE WITNESS: Okay.</p> <p>25 MR. RUKAVINA: I'll pass the</p>
<p style="text-align: right;">Page 120</p> <p>1 D. Sauter</p> <p>2 witness, save my questions till trial. Thank</p> <p>3 you.</p> <p>4 MR. MORRIS: Thank you, sir. Have a</p> <p>5 good day.</p> <p>6 MR. RUKAVINA: Madam Reporter, just</p> <p>7 before we're done, just to confirm, the witness</p> <p>8 does want his 30 days to read and review, so</p> <p>9 please send the transcript to me with exhibits.</p> <p>10 THE REPORTER: And Michael, do you</p> <p>11 need a copy?</p> <p>12 MR. AIGEN: Yeah, we'll order one,</p> <p>13 just regular time. Doesn't need to be</p> <p>14 expedited.</p> <p>15 (Time Noted: 3:38 p.m.)</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 DENNIS C. SAUTER</p> <p>20</p> <p>21 Subscribed and sworn to before me</p> <p>22 this day of 2021.</p> <p>23</p> <p>24 _____</p> <p>25 Notary Public</p>	<p style="text-align: right;">Page 121</p> <p>1 District of Columbia, to wit:</p> <p>2 I, Stacey L. Daywalt, a Notary</p> <p>3 Public of the District of Columbia, do hereby</p> <p>4 certify that the within-named witness remotely</p> <p>5 appeared before me at the time and place herein</p> <p>6 set out, and after having been duly sworn by</p> <p>7 me, according to law, was examined by Counsel.</p> <p>8 I further certify that the</p> <p>9 examination was recorded stenographically by me</p> <p>10 and this transcript is a true record of the</p> <p>11 proceedings.</p> <p>12 I further certify that I am not of</p> <p>13 counsel to any of the parties, nor an employee</p> <p>14 of counsel, nor related to any of the parties,</p> <p>15 nor in any way interested in the outcome of</p> <p>16 this action.</p> <p>17 As witness my hand and Notarial Seal</p> <p>18 this 17th day of November, 2021.</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 Stacey L. Daywalt, Notary Public</p> <p>23 My Commission Expires: 4/14/2026</p> <p>24</p> <p>25</p>



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## **EXHIBIT 20**

**Kristin Hendrix - October 27, 2021**

<b>1</b>	<p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 --oOo--</p> <p>5</p> <p>6 HIGHLAND CAPITAL MANAGEMENT, )</p> <p>7 L.P., )</p> <p>8 )</p> <p>9 Plaintiff, )</p> <p>10 )</p> <p>11 vs. ) No. 21-03004-sgj</p> <p>12 )</p> <p>13 HIGHLAND CAPITAL MANAGEMENT FUND )</p> <p>14 ADVISORS, L.P., )</p> <p>15 )</p> <p>16 Defendants. )</p> <hr/> <p>17 DEPOSITION OF</p> <p>18 KRISTIN HENDRIX</p> <p>19 October 27, 2021</p> <hr/> <p>20 DEPOSITION OF KRISTIN HENDRIX, produced as a</p> <p>21 witness, duly sworn by me via videoconference at the</p> <p>22 instance of the DEFENDANTS, was taken in the</p> <p>23 above-styled and numbered cause on October 27, 2021,</p> <p>24 from 10:11 A.M. to 1:19 P.M., before BRANDON D. COMBS,</p> <p>25 CSR, RPR, in and for the State of Texas, reported by</p> <p>computerized machine shorthand, at 500 North Akard</p> <p>Street, 38th Floor, Dallas, Texas.</p>	<b>3</b>
<b>2</b>	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 Examination by MR. RUKAVINA 6</p> <p>4 Examination by MR. AIGEN 94</p> <p>5 Further Examination by MR. RUKAVINA 110</p> <p>6 Examination by MR. MORRIS 111</p> <p>7</p> <p>8 EXHIBITS PAGE</p> <p>9</p> <p>10 Exhibit 1 Promissory Note, 5M, May 3 30</p> <p>11</p> <p>12 Exhibit 2 Promissory Note, 2.4M, May 2 30</p> <p>13</p> <p>14 Exhibit 3 Email from David Klos, May 2, 2019, 31</p> <p>15 HCMLP to HCMFA loan</p> <p>16</p> <p>17 Exhibit 4 Promissory Note, 5M, May 3 42</p> <p>18</p> <p>19 Exhibit 5 Promissory Note, 2.4M, May 2 42</p> <p>20</p> <p>21 Exhibit 6 Promissory Note, 5M, May 3 43</p> <p>22</p> <p>23 Exhibit 7 Promissory Note, 2.4M, May 2 43</p> <p>24</p> <p>25 Exhibit 8 Info, HCMF loan 05.03.2019 56</p>	<b>4</b>
<b>2</b>	<p>1 APPEARANCES</p> <p>2</p> <p>3 MUNSCH, HARDT, KOPF &amp; HARR, PC, 500 North</p> <p>4 Akard Street, Suite 3800, Dallas, TX 75201, represented</p> <p>5 by DAVOR RUKAVINA, Attorney at Law, appeared as counsel</p> <p>6 on behalf of the Defendants.</p> <p>7 Email: drukavina@munsch.com</p> <p>8</p> <p>9</p> <p>10 PACHULSKI, STANG, ZIEHL &amp; JONES, 780 Third</p> <p>11 Avenue, 34th Floor, New York, NY 10017-2024, represented</p> <p>12 by JOHN A. MORRIS, Attorney at Law, appeared as counsel</p> <p>13 on behalf of the Plaintiff.</p> <p>14 Email: jmorris@pszjlaw.com</p> <p>15</p> <p>16</p> <p>17 STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777,</p> <p>18 Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney</p> <p>19 at Law, appeared via videoconference as counsel on</p> <p>20 behalf of the Defendants Jim Dondero, HCMS and HCRE</p> <p>21 Partners.</p> <p>22 Email: michael.aigen@stinson.com</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Exhibit 9 Info, HCMF loan 05.02.2019 56</p> <p>2</p> <p>3 Exhibit 10 Email from Scott Ellington, Dec 2, 59</p> <p>4 2020, HCM - HCMFA financial</p> <p>5 statements</p> <p>6</p> <p>7 Exhibit 11 Email from John Morris to 62</p> <p>8 James Seery, Jan 6, 2021,</p> <p>9 HCM information request</p> <p>10</p> <p>11 Exhibit 12 Letter, Dec 3, 2020, Demand on 65</p> <p>12 Promissory Notes</p> <p>13</p> <p>14 Exhibit 13 Promissory Note, \$30,746,812.33, 72</p> <p>15 May 31</p> <p>16</p> <p>17 Exhibit 14 NPA \$30.7M 76</p> <p>18</p> <p>19 Exhibit 15 HCMLP Notes Receivable 83</p> <p>20</p> <p>21 Exhibit 16 Email from Frank Waterhouse to 85</p> <p>22 Lauren Thedford, Oct 6, 2020, 15(c)</p> <p>23 follow-up</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">5</p> <p>1 Exhibit 17 Email from James Seery to 88 2 James Dondero, Jan 7, 2021, demand 3 on promissory note 4 5 Exhibit 18 Email from Kristin Hendrix, Jan 12, 90 6 2021, NexPoint Note to HCMLP 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">7</p> <p>1 understood my question; okay? 2 A. Yeah. 3 MR. MORRIS: Objection. 4 Q. (BY MR. RUKAVINA) Sometimes Counsel will 5 make objections. Unless he instructs you not to 6 answer, you're still required to answer my questions. 7 A. Okay. 8 Q. Now, in preparation for this deposition, did 9 you read the deposition transcript or any part of it of 10 Frank Waterhouse? 11 A. I did not. 12 Q. Did anyone provide you a synopsis or summary 13 of it? 14 A. Maybe a few bits and pieces, but... 15 MR. RUKAVINA: Off the record for a second. 16 (Off the record.) 17 Q. (BY MR. RUKAVINA) What do you mean bits and 18 pieces? 19 A. I don't recall anything specific that was 20 said, other than it was very long. 21 Q. Did you talk to Frank Waterhouse about it? 22 A. Did not. 23 Q. Other than Highland's legal counsel, did you 24 talk to anyone else about -- or -- strike that. 25 Other than Highland's legal counsel, did you</p>
<p style="text-align: right;">6</p> <p>1 KRISTIN HENDRIX, 2 having been first duly sworn, testified as follows: 3 EXAMINATION 4 Q. (BY MR. RUKAVINA) Good morning. If you'll 5 state your name. 6 A. Kristin Hendrix. 7 Q. We're doing this both ways. You're on the 8 Zoom remotely and they can see you, but I would ask 9 that you and I maintain eye contact. Of course, if 10 someone is asking you on the Zoom, then maintain 11 contact with them, if that's okay with you. 12 A. Sure. 13 Q. Have you been deposed before? 14 A. No. 15 Q. So I'm sure your counsel explained to you, 16 but very quickly, you understand that you're testifying 17 under oath and penalty of perjury as though you were in 18 a court of law? 19 A. Yes. 20 Q. And you understand my job is to ask clear 21 questions that you understand? 22 A. Yes. 23 Q. And if for whatever reason you don't 24 understand my questions, please let me know or ask me 25 to rephrase; otherwise, I'm going to assume that you</p>	<p style="text-align: right;">8</p> <p>1 talk to anyone about Frank Waterhouse's deposition from 2 last week? 3 A. I did not. 4 Q. Did you review -- strike that. 5 Did you see any of the video of 6 Mr. Waterhouse's deposition? 7 A. Nope. 8 Q. Same questions now for Mr. Seery, S-e-e-r-y. 9 Did you read any portion or the whole of 10 Mr. Seery's deposition from last week? 11 A. I did not. 12 Q. See any of the video? 13 A. No. 14 Q. Did you see any synopsis or summary of his 15 deposition? 16 A. No. 17 Q. Did you talk to him about his deposition? 18 A. I did not. 19 Q. Other than talking to Highland's counsel, did 20 you talk to anyone about Mr. Seery's deposition? 21 A. No. 22 Q. Other than talking to Highland's counsel, did 23 you talk to anyone about your deposition today? 24 A. Just John Morris and Dave Klos. 25 Q. When did you talk to Mr. Klos, K-l-o-s?</p>

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<p style="text-align: right;">9</p> <p>1 A. First time about this was last Friday. And 2 then again Monday this week. And yesterday. And this 3 morning. 4 Q. Friday was there any lawyer present during 5 your discussion with Mr. Klos? 6 A. Yes, every time Mr. Morris was present. 7 MR. RUKAVINA: Is it your position that those 8 four discussions would be privileged, Counsel? 9 MR. MORRIS: Yes. 10 MR. RUKAVINA: Then we'll move on. 11 Q. (BY MR. RUKAVINA) So we've established the 12 four times you talked to Mr. Klos with counsel present. 13 Did you do anything else related to or in preparation 14 for today's deposition? 15 A. Yes, probably went through and reviewed some 16 emails, documentation that I may have had that I need 17 to refresh memory on. 18 Q. These documents and emails that you might 19 have reviewed, did you supplementally provide them to 20 counsel or anyone else? 21 A. Yes. 22 Q. This would have been in the last week or 23 10 days? 24 A. Yes. 25 Q. Prior to the last week or 10 days, are you</p>	<p style="text-align: right;">11</p> <p>1 A. Yes. 2 Q. And has your CPA license been current since 3 then? 4 A. Sure has. 5 Q. Have you faced any kind of disciplinary 6 action as a CPA? 7 A. I have not. 8 Q. Now, please walk me through your work 9 history. Let's say starting with after you graduated 10 college. 11 A. Sure. December of 2005, which was shortly -- 12 sorry, 2004, shortly after I graduated from 13 North Texas, I started at Highland. It was my first 14 real job out of college. I have been there ever since, 15 almost 17 years now. 16 Have worked in the corporate accounting 17 department the entire time. Started off as the AP 18 associate, and worked my way up over the years and 19 currently am the controller. 20 Q. So even when you were getting your MBA and 21 CPA you were employed by Highland? 22 A. Yes. 23 Q. Impressive. You're the controller today you 24 mentioned? 25 A. Yes.</p>
<p style="text-align: right;">10</p> <p>1 aware that my office served requests for production on 2 Highland? 3 A. Yes. 4 Q. And did you do anything prior to the last 5 week or 10 days to try to search both your personal 6 records and corporate records for any responsive 7 documents? 8 A. Not that I recall. 9 Q. Is that something that you understand legal 10 counsel was charged with? 11 A. Yes. 12 Q. Let's go briefly now about your background, 13 please. 14 Where do you live? 15 A. I live in Denton, Texas. 16 Q. And what is your date of birth, please? 17 A. January 26, 1982. 18 Q. And walk me through your educational 19 background, starting with any postsecondary, if any, 20 schooling or college or anything like that. 21 A. Sure. Graduated in 2004 from the University 22 of North Texas with a degree in finance. Went on to 23 get my MBA from SMU in 2009. And then went further and 24 got my CPA license I believe in 2015. 25 Q. In the state of Texas?</p>	<p style="text-align: right;">12</p> <p>1 Q. That's -- when did you become the controller, 2 sometime February or March of this year? 3 A. Yes. 4 Q. Before you became the controller, what was 5 your role at Highland? 6 A. Right before that I was assistant controller. 7 That was I believe April of 2020. Before that, the 8 senior accounting manager, and I held that position for 9 years. 10 Q. So in May of 2019 would you have been the 11 senior -- you said senior account? 12 A. Senior accounting manager I believe was my 13 title. 14 Q. And would that have been your title in May of 15 2017? 16 A. Yes, I believe so. 17 Q. And let's focus now on May 2019 as the senior 18 accounting manager. How would you describe your role 19 at Highland in May of 2019? What were your duties? 20 A. Sure. I helped with treasury management 21 function, cash forecasts and things like that. And 22 oversaw the financial reporting from the last batch of 23 AP to all the way to financials and reporting on 24 audits. 25 Q. Who did you report to in May of 2019?</p>



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<p style="text-align: right;">13</p> <p>1 A. David Klos.</p> <p>2 Q. What was Mr. Klos' title to your</p> <p>3 understanding back then?</p> <p>4 A. I believe he was the controller.</p> <p>5 Q. And do you have an understanding as to who</p> <p>6 Mr. Klos reported to back then?</p> <p>7 A. Yes, Frank Waterhouse.</p> <p>8 Q. Frank Waterhouse. Who was he in May of 2019?</p> <p>9 A. The CFO.</p> <p>10 Q. Is Mr. Klos still with Highland today?</p> <p>11 A. He is.</p> <p>12 Q. What is his role now?</p> <p>13 A. He's now CFO.</p> <p>14 Q. You mentioned treasury management as of 2019,</p> <p>15 May. What do you mean by treasury management? What is</p> <p>16 that?</p> <p>17 A. Generally speaking, we -- it's not just me as</p> <p>18 one person. We have checks and balances.</p> <p>19 My team would be in charge of sending out</p> <p>20 payments, reconciling bank statements, making sure</p> <p>21 money is in the right accounts, creating cash forecasts</p> <p>22 and reporting on those every week with the CFO and</p> <p>23 oftentimes the CEO.</p> <p>24 Generally that's everything that fell under</p> <p>25 the umbrella.</p>	<p style="text-align: right;">15</p> <p>1 A. Yes, you can say the debtor.</p> <p>2 Q. So when I say the debtor and you say the</p> <p>3 debtor we understand each other to mean Highland</p> <p>4 Capital Management, comma, LP; correct?</p> <p>5 A. Correct.</p> <p>6 Q. I apologize. In the December 2020 period, I</p> <p>7 would imagine that the debtor had its own -- that</p> <p>8 was -- strike that.</p> <p>9 We'll cut to the chase.</p> <p>10 In December of 2020, the debtor was providing</p> <p>11 services to various other entities affiliated with</p> <p>12 Mr. Dondero; correct?</p> <p>13 A. Correct.</p> <p>14 Q. That would have included NexPoint Advisors,</p> <p>15 LP?</p> <p>16 A. Correct.</p> <p>17 Q. And you're aware that NexPoint Advisors was</p> <p>18 the obligor on at least one promissory note to the</p> <p>19 debtor; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And did the debtor in December 2020 provide</p> <p>22 so-called treasury management services to NexPoint</p> <p>23 Advisors?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>
<p style="text-align: right;">14</p> <p>1 Q. And would your description of treasury</p> <p>2 management be the same for the December 2020 period?</p> <p>3 A. Yes.</p> <p>4 Q. Who at Highland or which group at Highland in</p> <p>5 December of 2020 would have been responsible for noting</p> <p>6 that there are certain bills that need to be paid in</p> <p>7 the near or subsequent future.</p> <p>8 By way of, let's say, accounts payable or</p> <p>9 promissory notes or taxes or anything like that?</p> <p>10 A. Can you repeat your question.</p> <p>11 Q. Sure. So obviously, Highland was a pretty</p> <p>12 sophisticated business; correct?</p> <p>13 A. Yeah.</p> <p>14 MR. MORRIS: Objection to the form.</p> <p>15 Q. (BY MR. RUKAVINA) And had various accounts</p> <p>16 payable; right?</p> <p>17 A. Yes.</p> <p>18 Q. And it had maybe, let's just say, certain</p> <p>19 note obligations that it had to pay from time to time;</p> <p>20 correct?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question. Do you mean Highland Capital?</p> <p>23 MR. RUKAVINA: I mean Highland Capital</p> <p>24 Management; correct, I'm sorry. The debtor.</p> <p>25 Q. (BY MR. RUKAVINA) Can we say the debtor?</p>	<p style="text-align: right;">16</p> <p>1 THE WITNESS: Yes.</p> <p>2 Q. (BY MR. RUKAVINA) As part of that, in</p> <p>3 December 2020, would it have been employees of the</p> <p>4 debtor that would have scheduled for potential payment,</p> <p>5 subject to approval by NexPoint, NexPoint's future</p> <p>6 obligations as they were coming due?</p> <p>7 A. Yes, we would have scheduled, only with</p> <p>8 approval.</p> <p>9 Q. And would that have included NexPoint's</p> <p>10 obligations on the promissory note to Highland?</p> <p>11 A. Yes.</p> <p>12 Q. Back to your background briefly.</p> <p>13 Do you have any legal training at all?</p> <p>14 A. I do not.</p> <p>15 Q. Do you have any courses, have you taken any</p> <p>16 courses in drafting promissory notes?</p> <p>17 A. No.</p> <p>18 Q. Do you believe that your expertise as a</p> <p>19 certified public accountant gives you any greater</p> <p>20 qualification than anyone else to prepare a promissory</p> <p>21 note?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: No.</p> <p>25 Q. (BY MR. RUKAVINA) Have you ever prepared or</p>

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<p style="text-align: right;">17</p> <p>1 drafted a promissory note?</p> <p>2 A. That term is probably used loosely. I have</p> <p>3 not completely drafted a promissory note from scratch,</p> <p>4 no.</p> <p>5 Q. And we'll go into the details. Fair to say</p> <p>6 that you have taken a form promissory note and revised</p> <p>7 it?</p> <p>8 A. Absolutely.</p> <p>9 Q. Was this part of your job in May of 2019 at</p> <p>10 Highland?</p> <p>11 A. Yes.</p> <p>12 Q. Going back to the May 2019 time frame, were</p> <p>13 you part of a particular group at Highland, like</p> <p>14 accounting or legal or compliance?</p> <p>15 A. Yes, corporate accounting.</p> <p>16 Q. Corporate accounting. That's what you</p> <p>17 described before about treasury management and</p> <p>18 projections and forecasts?</p> <p>19 A. Yes.</p> <p>20 Q. In May of 2019, was it the practice at</p> <p>21 Highland that corporate accounting would be responsible</p> <p>22 for drafting intercompany promissory notes?</p> <p>23 A. Not necessarily drafting, but updating a</p> <p>24 draft that had been previously produced and provided by</p> <p>25 our legal team, yes.</p>	<p style="text-align: right;">19</p> <p>1 Q. By updating, what do you mean?</p> <p>2 A. There's a few things that would need</p> <p>3 updating, the date.</p> <p>4 Q. Maker?</p> <p>5 A. Maker.</p> <p>6 Q. Amount?</p> <p>7 A. The dollar amount, the interest rate.</p> <p>8 Q. And is it your testimony that the corporate</p> <p>9 accounting group would do these things on its own</p> <p>10 without necessarily the involvement of the legal group?</p> <p>11 MR. MORRIS: Objection to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: Generally, yes.</p> <p>14 Q. (BY MR. RUKAVINA) Do you have any memory in</p> <p>15 or before May of 2019 if the corporate -- I'm sorry, if</p> <p>16 the legal group became involved in drafting or</p> <p>17 executing any prior intercompany promissory notes?</p> <p>18 A. Yes.</p> <p>19 Q. Explain to me what you remember about that.</p> <p>20 A. I do know that they were involved with</p> <p>21 drafting restructured notes. So taking demand notes</p> <p>22 and turning them into a 30-year amort note.</p> <p>23 That was in 2017. I know for sure that they</p> <p>24 were involved in that because it was something</p> <p>25 different. We weren't just updating a demand note.</p>
<p style="text-align: right;">18</p> <p>1 Q. And Highland in May -- the debtor in May of</p> <p>2 2019 did have a legal department?</p> <p>3 A. Yes.</p> <p>4 Q. Kind of like the corporate accounting, there</p> <p>5 was a separate legal department; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And who would have been in charge of that</p> <p>8 department in May of 2019?</p> <p>9 A. Scott Ellington, E-I-I-n-g-t-o-n.</p> <p>10 Q. In May of 2019 or by May of 2019 was there</p> <p>11 any practice at Highland as to whether its legal</p> <p>12 department would be involved with the drafting or</p> <p>13 execution of any intercompany promissory notes?</p> <p>14 MR. MORRIS: Objection to the form of the</p> <p>15 question.</p> <p>16 THE WITNESS: It depends on the note.</p> <p>17 Q. (BY MR. RUKAVINA) What did it depend on?</p> <p>18 A. Our typical practice is if we have a loan</p> <p>19 with certain affiliates that it's a demand note. We</p> <p>20 have a template that we have used for years that was</p> <p>21 created by either our internal legal team or an outside</p> <p>22 law firm, I'm not sure which.</p> <p>23 The typical practice is always updating a few</p> <p>24 things on that template, getting it executed, and</p> <p>25 filing it in our audit folders.</p>	<p style="text-align: right;">20</p> <p>1 Q. Is it your testimony that to the best of your</p> <p>2 recollection by May of 2019 and in May of 2019 it would</p> <p>3 have been the corporate accounting group that would</p> <p>4 have handled routine intercompany demand notes?</p> <p>5 A. Yes.</p> <p>6 Q. And you can think of more than one instance</p> <p>7 on which that happened?</p> <p>8 A. Yes.</p> <p>9 Q. And this is not a memory test, but going back</p> <p>10 in time can you try to give an estimate of what year</p> <p>11 that first started happening, that the corporate</p> <p>12 accounting would handle the drafting or execution of</p> <p>13 intercompany demand notes?</p> <p>14 A. As far as I can remember.</p> <p>15 Q. Is it your testimony that as -- maybe even</p> <p>16 going back as far as 2005 there were intercompany</p> <p>17 demand notes?</p> <p>18 A. Yes.</p> <p>19 Q. I don't know how to ask this question, but</p> <p>20 was this a significant thing in corporate accounting or</p> <p>21 just another routine deal when you handled demand</p> <p>22 notes?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: This is a routine job duty that</p>

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<p style="text-align: right;">21</p> <p>1 we routinely did.</p> <p>2 Q. (BY MR. RUKAVINA) Between 2005 and 2019, do</p> <p>3 you remember any maker on these intercompany demand</p> <p>4 notes actually being required to pay a demand note, in</p> <p>5 other words, Highland making demand?</p> <p>6 A. Not that I can specifically recall.</p> <p>7 Q. Do you have any recollection as to what</p> <p>8 happened to these intercompany demand notes over the</p> <p>9 years between 2005 and 2019?</p> <p>10 A. Yeah. Typically anytime specifically Jim</p> <p>11 Dondero would need to move money between related</p> <p>12 parties, he would pay down -- when I say him, he would</p> <p>13 have us in corporate accounting move money around, pay</p> <p>14 off notes, reissue new notes somewhere else.</p> <p>15 So a way to move money around between his</p> <p>16 entities.</p> <p>17 Q. So let's use just hypotheticals here so that</p> <p>18 I'm not trying to pin you down to any specific fact.</p> <p>19 But between 2005 and 2019, is it fair to say</p> <p>20 that if some Dondero entity that's not the debtor</p> <p>21 needed money and the debtor had money, then Dondero</p> <p>22 would have the debtor lend money to that entity on a</p> <p>23 demand note basis?</p> <p>24 A. So long as they have the cash available to do</p> <p>25 so.</p>	<p style="text-align: right;">23</p> <p>1 A. If the debtor needed cash to lend to another</p> <p>2 entity.</p> <p>3 Q. I see. So again, it's all one big happy</p> <p>4 family, and whoever needed cash, the cash moved around;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Was it Mr. Dondero that basically was the</p> <p>8 only deciding person in each instance that you're aware</p> <p>9 of in those 14 years as to when a note would be made or</p> <p>10 repaid?</p> <p>11 A. I can't answer specifically to that. Most of</p> <p>12 my direction came from our CFO at the time,</p> <p>13 Frank Waterhouse. So what conversations he would have</p> <p>14 with Jim Dondero, I can't answer to that. But I would</p> <p>15 suspect so, yes.</p> <p>16 Q. And in May of 2019 or by May of 2019, did you</p> <p>17 communicate personally, by email or telephone, in</p> <p>18 person, periodically with Jim Dondero?</p> <p>19 A. I can't say periodically, no.</p> <p>20 Q. Well, I'm not trying to put words in your</p> <p>21 mouth. Is it fair to say that you kind of -- your</p> <p>22 communications stopped with Mr. Waterhouse and</p> <p>23 Waterhouse communicated with Dondero, as opposed to you</p> <p>24 regularly communicating with Dondero?</p> <p>25 A. That's typical, yes.</p>
<p style="text-align: right;">22</p> <p>1 Q. "They" being the debtor?</p> <p>2 A. Debtor, yes.</p> <p>3 Q. And is it fair to say, then, again</p> <p>4 hypothetically without any specifics, that if the</p> <p>5 debtor maybe from time to time needed money and one of</p> <p>6 these other entities had cash, then Dondero would cause</p> <p>7 that other entity to pay down the demand note?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: Can you repeat that.</p> <p>11 Q. (BY MR. RUKAVINA) Sure. So I think you</p> <p>12 mentioned that from time to time these entities would</p> <p>13 pay down these demand notes?</p> <p>14 A. To the debtor?</p> <p>15 Q. To the debtor.</p> <p>16 A. Yes.</p> <p>17 Q. And is that, hypothetically again, is that</p> <p>18 because on occasion the debtor might have needed cash</p> <p>19 and these entities had the cash, so Dondero would have</p> <p>20 them pay back the note?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: Yes, that could be a reason.</p> <p>24 Q. (BY MR. RUKAVINA) Can you think of any other</p> <p>25 reason in those 14 years?</p>	<p style="text-align: right;">24</p> <p>1 Q. Can you think of any instances in which</p> <p>2 Mr. Dondero gave you any instructions or you came to</p> <p>3 him seeking any instructions, without some intermediary</p> <p>4 between the two of you?</p> <p>5 A. No, usually Frank was present.</p> <p>6 Q. Would you categorize Mr. Waterhouse as kind</p> <p>7 of guarding with jealousy his access to Mr. Dondero?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: No.</p> <p>11 Q. (BY MR. RUKAVINA) What kind of boss was he</p> <p>12 in May of 2019? Was he laid back, or was he a jerk?</p> <p>13 Was he demanding? How would you characterize him in</p> <p>14 May of 2019?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: I would say he was a good boss.</p> <p>18 Q. (BY MR. RUKAVINA) You think he was competent</p> <p>19 as far as his job went?</p> <p>20 A. Yes, very competent.</p> <p>21 Q. Do you think he was competent as far as his</p> <p>22 job went in December of 2020?</p> <p>23 A. Yes.</p> <p>24 Q. January 2021?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">25</p> <p>1 Q. Was he patient and understanding as a boss?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Was he ever condescending or rude to</p> <p>4 anyone in your presence?</p> <p>5 A. No.</p> <p>6 Q. So you're the controller today at Highland,</p> <p>7 the debtor, the reorganized debtor; right?</p> <p>8 A. Yes.</p> <p>9 Q. And who do you report to? You mentioned</p> <p>10 Mr. Klos is the CFO?</p> <p>11 A. Yes.</p> <p>12 Q. And do you also report to Mr. Seery?</p> <p>13 A. Yes, I think everybody does.</p> <p>14 Q. And I don't need to know details, but I take</p> <p>15 it you're on a salary from reorganized Highland?</p> <p>16 A. Yes.</p> <p>17 Q. Is any part of your compensation merit or</p> <p>18 bonus based?</p> <p>19 A. It could potentially be.</p> <p>20 Q. Have you had any discussions with Mr. Seery</p> <p>21 or Mr. Klos about some sort of bonus compensation?</p> <p>22 A. Yes.</p> <p>23 Q. Has anything been agreed to?</p> <p>24 A. Yes.</p> <p>25 Q. And again, I don't need to know the exact</p>	<p style="text-align: right;">27</p> <p>1 A. Correct.</p> <p>2 Q. And how Highland, reorganized Highland</p> <p>3 collects these promissory notes is going to play no</p> <p>4 part in your base and bonus compensation to your</p> <p>5 understanding; is that correct?</p> <p>6 A. To my knowledge, yes.</p> <p>7 Q. So you have no direct or indirect stake in</p> <p>8 the outcome of these litigations?</p> <p>9 A. No.</p> <p>10 Q. And you understand that I represent HCMFA and</p> <p>11 NexPoint?</p> <p>12 A. Yes.</p> <p>13 Q. And these court reporters are not familiar</p> <p>14 with some of our terminology. NAP [verbatim], if we</p> <p>15 say that, that means NexPoint; right?</p> <p>16 A. Uh-huh.</p> <p>17 Q. You have to say yes or no.</p> <p>18 A. Yes, NPA, NexPoint.</p> <p>19 Q. NPA. And when we say NexPoint, you and I are</p> <p>20 meaning NexPoint Advisors, LP; right?</p> <p>21 A. Yes.</p> <p>22 Q. And when we say HCMFA, we're meaning Highland</p> <p>23 Capital Management Fund Advisors, LP, yes?</p> <p>24 A. Yes.</p> <p>25 Q. What is your understanding of the two</p>
<p style="text-align: right;">26</p> <p>1 numbers. What would your bonus compensation consist</p> <p>2 of? How would it be decided?</p> <p>3 A. It's actually -- was decided when I agreed to</p> <p>4 stay on the Highland team back in February 2021, so</p> <p>5 it's in my employment agreement.</p> <p>6 Q. So what's your bonus compensation?</p> <p>7 A. I'm not sure I understand what you're asking.</p> <p>8 Q. So is the bonus discretionary on the part of</p> <p>9 Highland?</p> <p>10 A. No, it's a set amount.</p> <p>11 Q. And what triggers it or governs the set</p> <p>12 amount?</p> <p>13 A. Just it gets paid out on a certain date of</p> <p>14 the year. It's very straightforward, set out in my</p> <p>15 employment agreement.</p> <p>16 Q. Is it irrespective of the performance of the</p> <p>17 reorganized debtor?</p> <p>18 A. Yes.</p> <p>19 Q. So why do you call it a bonus instead of base</p> <p>20 compensation?</p> <p>21 A. That's what it's called in my agreement.</p> <p>22 Q. So your base compensation and your bonus,</p> <p>23 it's your testimony, you're going to earn it</p> <p>24 irrespective of whether reorganized Highland does good</p> <p>25 or bad with respect to its profitability?</p>	<p style="text-align: right;">28</p> <p>1 lawsuits, the one against HCMFA and the one against</p> <p>2 NexPoint, that you're being deposed on today?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 Q. (BY MR. RUKAVINA) Who is suing who and for</p> <p>6 what?</p> <p>7 A. I don't know all the details.</p> <p>8 Q. So we've established that you've discussed</p> <p>9 these lawsuits in the last week or a little bit more</p> <p>10 with legal counsel. I don't want to talk about that.</p> <p>11 Prior to these recent discussions, did you</p> <p>12 have any discussions with anyone at Highland about its</p> <p>13 lawsuits against HCMFA and NexPoint on promissory</p> <p>14 notes?</p> <p>15 A. Repeat that again.</p> <p>16 Q. Sure. So remember we're excluding the recent</p> <p>17 discussions in the last week or 10 days with counsel;</p> <p>18 right?</p> <p>19 A. Okay.</p> <p>20 Q. Are you aware that in January of 2021 the</p> <p>21 debtor sued NexPoint to collect on a promissory note?</p> <p>22 A. I'm aware that demand notices were sent.</p> <p>23 Q. So until recently you weren't aware that a</p> <p>24 lawsuit had been filed?</p> <p>25 A. There's a lot of lawsuits filed. I can't</p>

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<p style="text-align: right;">29</p> <p>1 keep track of what is what or what we're talking about 2 at certain times. 3 Q. But you have no distinct memory of that? 4 A. Correct. 5 Q. And same question for the lawsuit that the 6 debtor filed against HCMFA in January. 7 Do you have any specific memory of that 8 lawsuit having been filed? 9 A. Not specifically. 10 Q. You mentioned that you're aware that on or 11 before January 2021, demand letters had been sent? 12 A. Yes. 13 Q. Did you play any role in either drafting 14 those demand letters or the decision to send them? 15 A. No. 16 Q. So going back to my question about these 17 lawsuits, do you have any memory of anyone asking 18 you -- again, excluding the last week or two. 19 Do you have any memory of anyone asking you 20 to do anything with respect to either or both of these 21 lawsuits? 22 A. No. 23 Q. You have no memory of Mr. Waterhouse, 24 Mr. Klos, Mr. Surgent, or Mr. Seery asking for any 25 background information or your input at all on these</p>	<p style="text-align: right;">31</p> <p>1 about either or both of these two promissory notes? 2 A. Sure, yes. 3 Q. What do you remember? 4 A. I remember seeing them because I've recently 5 looked at them. I see them all the time in our loan 6 tracking spreadsheets. My team would have been 7 responsible for the whole process that I explained 8 before when it comes to a promissory note. 9 Q. And -- 10 MR. MORRIS: Are you finished? 11 THE WITNESS: Yes. 12 Q. (BY MR. RUKAVINA) And we have an email here 13 that might give some more context to that if I can find 14 it here. 15 This will be Exhibit 3. This is an email 16 from David Klos to corporate accounting dated May 2, 17 2019. 18 (Whereupon, Exhibit 3 was marked for 19 identification.) 20 Q. (BY MR. RUKAVINA) Do you see this email, 21 ma'am? 22 A. Yes. 23 Q. Okay. Corporate accounting, would that email 24 group have included you? 25 A. Yes.</p>
<p style="text-align: right;">30</p> <p>1 two lawsuits? 2 MR. MORRIS: Better not have been -- 3 THE WITNESS: No. 4 Q. (BY MR. RUKAVINA) Who did I say? Did I 5 misspeak? Okay. 6 Now we're going to have some exhibits here. 7 And do you have the labels? 8 Let's take a minute break off the record. 9 (Off the record.) 10 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to 11 provide to you a promissory note in the original 12 principal amount of \$5 million from HCMFA. This is the 13 PDF version of this as filed with the Court for 14 collection. It's going to be Exhibit 1. 15 (Whereupon, Exhibit 1 was marked for 16 identification.) 17 Q. (BY MR. RUKAVINA) Before you look at 18 Exhibit 1, I'm going to do the same thing for 19 Exhibit 2, which is a promissory note from HCMFA for 20 \$2.4 million, dated May 2, 2019. 21 (Whereupon, Exhibit 2 was marked for 22 identification.) 23 Q. (BY MR. RUKAVINA) Again, Ms. Hendrix, these 24 are the PDF versions of these notes as filed with the 25 Court. Sitting here today, do you remember anything</p>	<p style="text-align: right;">32</p> <p>1 Q. And this email says, Kristin, can you or 2 Hayley. Do you think that Kristin was you? 3 A. I do. 4 Q. Do you remember receiving this email? 5 A. Not explicitly. 6 Q. So it says Blair. Who would Blair be? 7 A. Blair was our AP associate. 8 Q. What is her last name? 9 A. At this time it would have been Roeber, 10 R-o-e-b-e-r. 11 Q. Okay. And did it subsequently change? 12 A. Yes, it's now Hillis, H-i-l-l-i-s. 13 Q. Please send \$2.4 million from HCMLP to HCMFA. 14 This is a new interco loan. Kristin, can you or Hayley 15 please prep a note for execution. I'll have further 16 instructions later today, but please process this 17 payment as soon as possible. 18 Did I read that correctly? 19 A. Yes. 20 Q. Do you have any memory of whether this email 21 relates to Exhibit 2, the \$2.4 million promissory note? 22 A. It seems like it does, same date, same 23 amount. 24 Q. Do you have any memory, or in reviewing your 25 files did you see any similar email or document that</p>



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<p style="text-align: right;">33</p> <p>1 would have related to Exhibit 1, the \$5 million 2 promissory note? 3 A. Yes. I believe there's another email for 4 that one. 5 Q. And do you believe that you provided that to 6 counsel? 7 A. Yes. 8 Q. Recently or some time ago? 9 A. Well, I don't think I provided it, so I'm not 10 sure when they got it. I know it has been provided. 11 Q. You know that it has? 12 A. Uh-huh. 13 Q. How do you know? 14 A. Because I've seen it. 15 Q. In the production that was produced to me? 16 A. Yes. 17 Q. And also from a David Klos? 18 A. This one, or on the -- when I say this one, 19 on the \$2.4 million or the 5-? 20 Q. On the \$5 million note. 21 A. I'm not sure. 22 Q. Okay. Let me make sure I understand you 23 correctly. 24 Sitting here today you believe that there is 25 another email referencing the \$5 million loan that has</p>	<p style="text-align: right;">35</p> <p>1 the door, is typically how this works. 2 Q. Is the answer generally the same for the 3 \$5 million note? 4 A. Yes. 5 Q. So is it fair to say that typically, 6 obviously not every time, but typically your corporate 7 accounting group when it would see intercompany 8 transfers in large amounts would believe that they were 9 loans? 10 MR. MORRIS: Objection to the form of the 11 question. 12 THE WITNESS: Typically they were loans. 13 There's not really another way to get money from one 14 entity to another. And if they were papered as a loan, 15 that means we were told to set it up that way. 16 Q. (BY MR. RUKAVINA) What do you mean papered 17 as a loan? Aren't you papering it as a loan when 18 someone makes the promissory note? 19 A. Yes, because we're told by somebody to do 20 that. 21 Q. And in this instance, Mr. Klos on Exhibit 3 22 told the group that this was a loan; right? 23 A. Correct. But he would have spoken with 24 Frank Waterhouse or Jim Dondero prior to that, before 25 telling anybody to do that.</p>
<p style="text-align: right;">34</p> <p>1 been produced to my office? 2 A. Yes. I believe so. 3 Q. Okay. And going off memory, did it kind of 4 say the same thing as this Exhibit 3 except that it 5 referenced \$5 million? 6 MR. MORRIS: Objection to the form of the 7 question. 8 THE WITNESS: Generally, should have said the 9 similar situation, yeah. 10 Q. (BY MR. RUKAVINA) So Mr. Klos says, this is 11 a new interco loan, for Exhibit 3. Other than what he 12 told you, that this is an intercompany loan, did anyone 13 else tell you or did you have any other information on 14 May 2, 2019 that this was a loan? 15 A. I don't specifically recall these 16 conversations, but I can tell you our normal practice 17 would be we would either likely be in a cash meeting -- 18 and I say "we." Would have been myself, Dave Klos, 19 Frank Waterhouse, potentially even Jim Dondero. 20 But I don't recall conversations on this 21 specific date. But general practice is we would talk 22 about it. 23 Oftentimes, Frank would either call Dave or I 24 or stop by and tell us that, we need to send money to 25 an affiliate, paper up a new loan, let's get a wire out</p>	<p style="text-align: right;">36</p> <p>1 Q. Okay. And do you have any knowledge that he 2 did speak to Mr. Waterhouse or Mr. Dondero before 3 sending this email? 4 A. Again, I don't have specific knowledge on the 5 exact conversations, but that's always how it has 6 worked. 7 Q. That's how it was for 14 or 15 years; 8 correct? 9 A. Yes. 10 Q. But you're logically assuming that it 11 happened here. You don't know that it happened here; 12 correct? 13 MR. MORRIS: Objection to the form of the 14 question. 15 THE WITNESS: I would have to be fairly 16 certain that it did, even though I can't recall 17 specific conversations. 18 Q. (BY MR. RUKAVINA) Did you ask Mr. Klos about 19 who told him that this is a new intercompany loan on 20 Exhibit 3? 21 A. No. It's quite possible I was involved in 22 the conversation. I reported to him. I wouldn't 23 question his authority. 24 Q. Did you ask Mr. Klos who told him that the 25 \$5 million deal was also an intercompany loan?</p>

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<p style="text-align: right;">37</p> <p>1 A. I did not ask that specific question that I 2 can recall. 3 Q. Did you ask Mr. Waterhouse whether either of 4 these transactions were loans? 5 A. I'm sure Mr. Waterhouse is the one that told 6 us they were loans. We wouldn't just paper up a loan, 7 send money out and call it a loan and account for it 8 that way, unless somebody specifically told us. 9 Q. Do you have any memory of Mr. Waterhouse 10 orally or in writing or email or in any way, shape, or 11 form on or about May 2 or 3, 2019 telling you that the 12 2.4 million or \$5 million transfers were intercompany 13 loans? 14 A. No specific knowledge of exact conversations, 15 but I'm certain that those conversations were had 16 because that's the only way that we would have papered 17 up a loan, sent money out as a loan, had them on our 18 financials for two years. 19 Q. So you're saying that this email, Exhibit 3, 20 from Mr. Klos was not enough, that there would have 21 been other things that happened to make you and other 22 people in your group confident that these were loans? 23 A. Yes. 24 Q. And these other things would have been in 25 person or by email?</p>	<p style="text-align: right;">39</p> <p>1 a consent fee that the advisor of the Global Allocation 2 Fund had promised to pay to shareholders of that fund, 3 and it was in the amount of \$5 million roughly. 4 So both of these loans were for those 5 purposes respectfully. 6 Q. And were you in May of 2019 also aware that 7 in addition to the \$2.4 million, there was another more 8 than \$5 million paid to that fund by HCMFA's insurer as 9 compensation for the NAV error? 10 A. By the insurance company, yes. 11 Q. So the \$7.4 million, you understood then was 12 a loan as opposed to compensation to HCMFA? 13 A. Yes. 14 Q. Okay. Did you understand in May of 2019 that 15 it had been the debtor and its valuation team that 16 caused that NAV error? 17 MR. MORRIS: Objection to the form of the 18 question. 19 THE WITNESS: I can't answer that. I was not 20 involved with the activities leading up to the NAV 21 error. 22 Q. (BY MR. RUKAVINA) How do you know that the 23 \$7.4 million were being transferred for the NAV error 24 and consent fee? 25 A. Because I do know about both of those</p>
<p style="text-align: right;">38</p> <p>1 A. Most likely in person via phone call. 2 Q. Okay. So again, you have no specific memory 3 of it, but based on the 14-year pattern and conduct you 4 believe that you would have discussed these two 5 transfers with Mr. Waterhouse and he would have told 6 you these are loans? 7 MR. MORRIS: Objection to the form of the 8 question. 9 THE WITNESS: Correct. 10 Q. (BY MR. RUKAVINA) And then would he have 11 told you to take care of the promissory notes, or was 12 that Mr. Klos here in Exhibit 3? 13 A. It could have been both. It's clearly Dave 14 in this email, but Frank could have also said that to 15 me. 16 Q. Now, do you -- strike that. 17 In May of 2019, did you know or were you told 18 why these \$7.4 million were being transferred from the 19 debtor to HCMFA? 20 A. Yes. I do have recollection that -- I do 21 know that there were two big events in May 2019. 22 2.4 million was related to a TerreStar NAV error, with 23 one of the funds advised by HCMFA. That's Global 24 Allocation Fund. 25 Similar with the \$5 million loan. There was</p>	<p style="text-align: right;">40</p> <p>1 instances and I do know that HCMFA needed to pay these 2 dollar amounts for both of those. 3 Q. And you knew that in May of 2019? 4 A. Yes. 5 Q. How did you know that in May of 2019? 6 A. It was lots of discussions had been going on 7 around both of these issues for months. These weren't 8 surprises to anybody. 9 Q. So although you weren't involved directly 10 with the NAV error issues, it was more or less common 11 knowledge in your accounting group? 12 A. Correct. 13 Q. Do you have any knowledge at all as to 14 whether Mr. Dondero decided to transfer these 15 \$7.4 million not as a loan, but to compensate HCMFA for 16 the debtor's alleged liability? 17 A. Have not heard of that. 18 Q. Ever? 19 A. Never. 20 Q. But you also never heard Mr. Dondero say that 21 these \$7.4 million were a loan; correct? 22 A. That was not told to me directly. 23 Q. Again, you're logically assuming that based 24 on many instances of intercompany transfers in the 25 14 years prior to that?</p>

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<p style="text-align: right;">41</p> <p>1 MR. MORRIS: Objection to the form of the 2 question. Mischaracterizes the testimony. 3 THE WITNESS: Correct. 4 Q. (BY MR. RUKAVINA) I think you answered 5 correct? 6 A. Correct. 7 Q. And you mentioned that after these notes, you 8 saw them on internal financials and that reinforces 9 your view that these were loans? 10 A. Correct. 11 Q. But as of May 2 and 3, 2019, no one had told 12 you directly that these are loans? 13 MR. MORRIS: Objection to the form of the 14 question. It's in writing. 15 THE WITNESS: That's not what I'm saying at 16 all. 17 Q. (BY MR. RUKAVINA) Other than Mr. Klos' email 18 or emails, no one told you on May 2 or May 3, 2019 that 19 you remember today that these were loans? 20 A. It quite possibly could have been told to me 21 in addition to this email. 22 Q. I understand. You just have no memory of 23 that today; correct? 24 A. Correct. 25 Q. Is there anything that you can think of</p>	<p style="text-align: right;">43</p> <p>1 answers don't count and I'm in trouble. 2 6 will be the \$5 million note, and 7 will be 3 the \$2.4 million note. 4 (Whereupon, Exhibits 6 &amp; 7 were marked for 5 identification.) 6 Q. (BY MR. RUKAVINA) Okay. So Exhibit 4 and 5 7 are the Word documents. Do you have any memory of you 8 doing anything with respect to these two Word 9 documents? 10 A. I don't have specific memory, but generally 11 speaking, it was my job to update promissory note 12 templates and create promissory notes. 13 Q. So do you believe that -- we discussed 14 earlier that your group would have used a template and 15 that it would have made changes reflecting the maker, 16 amount, date, interest rate. 17 Do you believe you were the one with respect 18 to 4 and 5 that updated that template to create 4 19 and 5? 20 A. I'm sure that I was, yes. 21 Q. Well, Exhibit 6 -- do you know what metadata 22 is? 23 A. Sort of. 24 Q. What's your understanding of what metadata 25 is?</p>
<p style="text-align: right;">42</p> <p>1 sitting here today to refresh your memory on that 2 point? 3 A. I do not think so. I'm sure there was 4 conversation that unfortunately would not be in an 5 email. 6 Q. Now, we have the Word documents, the Word 7 version of these two promissory notes, and you're going 8 to have rely on me that I printed these out as 9 Mr. Morris sent to me. If I'm misleading you on that, 10 then I'm in trouble and your answers don't count. 11 So please assume that I didn't doctor these 12 and that I printed them out as they were prepared to 13 me; okay? 14 A. Yes. 15 Q. So Exhibit 4 will be the \$5 million note and 16 Exhibit 5 will be the 2.4 million. 17 (Whereupon, Exhibits 4 &amp; 5 were marked for 18 identification.) 19 Q. (BY MR. RUKAVINA) Before I ask about 4 and 20 5, to be fair to you and refresh your memory, I'm going 21 to provide you printouts of the metadata, metadata -- 22 I'm not sure how to better say that -- for both notes. 23 And again I'm representing to you that I 24 printed out the metadata without doctoring it, so 25 please assume that's true, and if it's not, your</p>	<p style="text-align: right;">44</p> <p>1 A. Just in context from speaking on it recently, 2 it's going to tell you who made changes to the 3 documents, is what I would assume. 4 MR. RUKAVINA: Go off the record for one 5 second. 6 (Off the record.) 7 Q. (BY MR. RUKAVINA) So a little bit of error 8 on my part. We'll have some more metadata, but we can 9 still talk about 6 and 7. 10 It says the author JFORSHEE, J-F-O-R-S-H-E-E. 11 Do you recall or do you know who that person was? 12 A. I recognize the name, and it makes sense. 13 This says Strasburger is the company. I think he was 14 one of the lawyers that we had used at some point in 15 time. 16 Q. Strasburger is a law firm? 17 A. Yes. 18 Q. And then it says, so Exhibit 6 created May 3, 19 Exhibit 7 created May 2, modified, accessed. Does that 20 to the best of your understanding comport with when 21 Exhibits 4 and 5 were actually created? 22 A. Can you repeat that. 23 Q. Yeah. We'll wait for the rest of the 24 metadata. But let's go back to 4 and 5. 25 In and by May 2019 I think you mentioned that</p>

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<p style="text-align: right;">45</p> <p>1 it was your job to, I think you said update promissory 2 notes? 3 MR. MORRIS: Objection to the form of the 4 question. 5 Q. (BY MR. RUKAVINA) Let me take that question 6 back. 7 You testified earlier that your group would 8 have taken a template and used it to create or prepare 9 a new promissory note; right? 10 A. Right. 11 Q. How would you call that process? What word 12 would you use for that process? 13 A. Let's call it papering the loan. 14 Q. In May of 2019, was it your job to paper the 15 loan? 16 A. Yes. 17 Q. Would anyone else at the corporate accounting 18 group have been responsible to paper a loan? 19 A. At that time, I don't think so. I think I 20 was the one doing it. 21 Q. I think you mentioned that you think you 22 papered the loan, respecting Exhibits 4 and 5; correct? 23 A. Correct. 24 Q. You have no distinct present memory of 25 papering 4 and 5; correct?</p>	<p style="text-align: right;">47</p> <p>1 that Mr. Waterhouse's signature there appears on the 2 Word document as an image. 3 A. Uh-huh. 4 Q. Do you have any memory of whether there was 5 an image that someone would have affixed of 6 Mr. Waterhouse's signature to promissory notes? 7 A. Yes. We typically always -- he was 8 completely fine with having documentations -- sorry, 9 having documents signed or executed with his 10 e-signature. 11 Q. Would these pictures of his signature have 12 been his e-signature in May of 2019? 13 A. Yes. 14 Q. So let's just clarify that because I don't 15 want there to be any confusion. 16 I know there's some computer programs out 17 there that are restrictive and have passwords before 18 any signature is printed. And then there's some people 19 that use a stamp or an image; right? 20 MR. MORRIS: Objection to the form of the 21 question. 22 Q. (BY MR. RUKAVINA) Are you following me? 23 A. I follow you. 24 Q. In May of 2019, did Mr. Waterhouse have any 25 specific program that would have to -- you would have</p>
<p style="text-align: right;">46</p> <p>1 A. Correct. 2 Q. Can you think of anyone else at the corporate 3 accounting group that would have papered 4 and 5? 4 MR. MORRIS: Objection to the form of the 5 question. 6 THE WITNESS: The only other person that 7 could have would either be Dave Klos or Hayley Eliason. 8 Q. (BY MR. RUKAVINA) What was Hayley's role in 9 May of 2019? 10 A. She was the accountant. I can't recall her 11 specific title. 12 Q. Now, in May of 2019 when you papered a loan, 13 would you have consulted with either internal or 14 external legal before finishing that loan or presenting 15 it for signature or anything else? 16 A. Not if it was just our standard demand note 17 that we already had a template on. 18 Q. So would it have been your general course in 19 May of 2019, if you prepared Exhibits 4 and 5, not to 20 seek advice from internal or legal before proceeding 21 with these notes? 22 A. With these two specific notes? 23 Q. Yes. 24 A. Yes. 25 Q. If we flip the page, I'll represent to you</p>	<p style="text-align: right;">48</p> <p>1 to go through before it would spit out his e-signature, 2 or was he fine with you and his staff using an image 3 like this? 4 A. He was fine with using his e-signature, and 5 what is on these documents was that exact e-signature. 6 So I don't know if he had -- I don't know how it was 7 created originally. 8 Q. The e-signature? 9 A. E-signature. 10 Q. Do you have any memory with respect to 11 Exhibits 4 and 5 of getting Mr. Waterhouse's specific 12 approval to use his e-signature? 13 A. I don't have exact specific memory, same as 14 conversations on these loans. But he would have had to 15 approve this loan in the dollar amount, the day. 16 He would have been the one directing us to 17 create these loans. In past practice he has always 18 approved using his e-signature to execute documents. 19 Q. How would he have approved Exhibits 4 and 5? 20 By that, I mean by email or memorandum? How would he 21 have approved it in May of 2019? 22 MR. MORRIS: Objection to the form of the 23 question. 24 THE WITNESS: I would assume that, as I've 25 stated previously, these directions were coming</p>

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<p style="text-align: right;">49</p> <p>1 directly from him to paper a loan. These changes that 2 are made are only to the dollar amount. Interest rate 3 is pulled right off the IRS website. 4 That is his approval to paper a loan and in 5 fact execute or approve the loan. 6 <b>Q. (BY MR. RUKAVINA) In May of 2019, would</b> 7 <b>Mr. Waterhouse -- what was his practice as far as using</b> 8 <b>an ink signature on documents as opposed to an</b> 9 <b>e-signature? Did he have a practice?</b> 10 <b>MR. MORRIS:</b> Objection to the form of the 11 question. 12 <b>THE WITNESS:</b> He has never specifically said, 13 on certain documents I would like to ink it with my 14 signature. Probably at this time, 99 percent of the 15 stuff my team got his signature on was his e-signature. 16 I think it just depended on the group and what it was. 17 <b>Q. (BY MR. RUKAVINA) So how would he authorize</b> 18 <b>you or your team to use his e-signature for any given</b> 19 <b>document in May of 2019?</b> 20 <b>MR. MORRIS:</b> Objection to the form of the 21 question. 22 <b>THE WITNESS:</b> Through the conversations that 23 would have been had before these emails went out saying 24 paper loan. 25 <b>Q. (BY MR. RUKAVINA) And -- okay. So, and</b></p>	<p style="text-align: right;">51</p> <p>1 <b>Q. But you have no memory of that authority or</b> 2 <b>approval, specifically for 4 and 5?</b> 3 <b>MR. MORRIS:</b> Objection. Asked and answered 4 about five times. 5 <b>THE WITNESS:</b> Same as my answer I just gave. 6 <b>Q. (BY MR. RUKAVINA) And I think you mentioned</b> 7 <b>that in your years at Highland your team papered</b> 8 <b>hundreds of loans?</b> 9 <b>A. Yeah.</b> 10 <b>Q. In your time at Highland, is it your</b> 11 <b>testimony that the accounting -- corporate accounting</b> 12 <b>department never made a mistake with respect to</b> 13 <b>anything that it did?</b> 14 <b>MR. MORRIS:</b> Objection to the form of the 15 question. 16 <b>THE WITNESS:</b> No, I did not say that. 17 <b>Q. (BY MR. RUKAVINA) Do you recall any mistakes</b> 18 <b>in your time at the corporate accounting group at</b> 19 <b>Highland that had been made, any significant mistakes?</b> 20 <b>MR. MORRIS:</b> Objection to the form of the 21 question. 22 <b>THE WITNESS:</b> Significant mistakes, not that 23 I can recall. 24 <b>Q. (BY MR. RUKAVINA) No accounts payable</b> 25 <b>mistakenly paid?</b></p>
<p style="text-align: right;">50</p> <p>1 <b>after his e-signature was used either on these notes or</b> 2 <b>other documents in May of 2019, would you have brought</b> 3 <b>the documents back to him for any kind of verification?</b> 4 <b>MR. MORRIS:</b> Objection to the form of the 5 question. 6 <b>THE WITNESS:</b> Probably not. These are all 7 very standard. We've papered hundreds of loans. So I 8 think he trusted that we can handle updating a date and 9 a dollar amount on these loan templates. 10 <b>Q. (BY MR. RUKAVINA) Do you know or believe, or</b> 11 <b>your recent review of documents, did it reveal an email</b> 12 <b>from Mr. Waterhouse to you specifically authorizing his</b> 13 <b>e-signature on Exhibits 4 and/or 5?</b> 14 <b>A. Not that I recall seeing, no.</b> 15 <b>Q. Sitting here today, do you have any memory of</b> 16 <b>Mr. Waterhouse orally or otherwise specifically</b> 17 <b>authorizing you to affix his e-signature to Exhibits 4</b> 18 <b>and/or 5?</b> 19 <b>A. Specifically on these loans, no, I don't</b> 20 <b>recall those conversations. But, again, our practice</b> 21 <b>has always been we have this discussion, he's under the</b> 22 <b>understanding that we're going to paper the loans, he's</b> 23 <b>always comfortable with using his e-signature.</b> 24 <b>This is not something me or my team would</b> 25 <b>have done without that authority and approval from him.</b></p>	<p style="text-align: right;">52</p> <p>1 <b>MR. MORRIS:</b> Objection to the form of the 2 question. 3 <b>THE WITNESS:</b> I cannot specifically answer 4 that question with 17 years of work to recall, sorry. 5 <b>MR. RUKAVINA:</b> Just take a quick break. If 6 you need a restroom -- off the record. 7 (Off the record.) 8 <b>Q. (BY MR. RUKAVINA) Going back to Exhibits 4</b> 9 <b>and 5.</b> 10 <b>Mr. Waterhouse signed these promissory notes.</b> 11 <b>Is there any particular reason why he signed them as</b> 12 <b>opposed to Dondero or someone else?</b> 13 <b>A. No particular reason. He's an officer for</b> 14 <b>both companies. He's a signatory.</b> 15 <b>Q. Who decided, if anyone, to your knowledge,</b> 16 <b>that he would be the one signing the notes, these two</b> 17 <b>notes?</b> 18 <b>A. I don't know who would have decided that, but</b> 19 <b>typically if Frank specifically wanted Jim Dondero to</b> 20 <b>sign it, he would say, take it to Jim to sign.</b> 21 <b>Q. Do you have a recollection of</b> 22 <b>Mr. Dondero -- strike that.</b> 23 <b>Do you have a recollection of Mr. Waterhouse</b> 24 <b>signing other promissory notes?</b> 25 <b>A. Yes. I know for sure he has signed other</b></p>



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<p style="text-align: right;">53</p> <p>1 promissory notes. I can't tell you explicitly which 2 ones. 3 (Off the record.) 4 Q. (BY MR. RUKAVINA) Are you saying that in May 5 of 2019 -- strike that. 6 By May of 2019, was it not the standard 7 practice at the debtor that Mr. Dondero would sign 8 intercompany promissory notes? 9 MR. MORRIS: Objection to the form of the 10 question. 11 THE WITNESS: No, that's not standard 12 practice. Just needed to be somebody -- somebody who 13 is a signer for the entity on the incumbency 14 certificate. 15 Q. (BY MR. RUKAVINA) Was there a standard 16 practice, or did you just describe the standard 17 practice that it was someone on the incumbency 18 certificate? 19 A. That's correct, somebody on the incumbency 20 certificate. Frank is a great prospect to sign, with 21 giving direction to set loans up, send money out. Why 22 wouldn't he sign it. 23 Q. Do you have any memory sitting here today of 24 Mr. Waterhouse telling you or agreeing that he would be 25 signing these two promissory notes for HCMFA?</p>	<p style="text-align: right;">55</p> <p>1 Q. Well, let's go back a little bit in time. 2 Would you agree that at some point prior to 3 2019 the standard course was that paper notes were ink 4 signed? 5 MR. MORRIS: Objection to the form of the 6 question. 7 THE WITNESS: I could not tell you 8 specifically when notes were or were not ink signed. 9 Q. (BY MR. RUKAVINA) Was there any repository, 10 to the best of your recollection, as of May 2019 where 11 any ink-signed original promissory notes were kept by 12 the debtor? 13 A. No. We always would scan them in, save them 14 on our shared drive. Never had paper copies. 15 Q. So that's -- fixing to ask that question 16 next. 17 So Exhibits 4 and 5, would they even have 18 been printed after they were papered up? 19 MR. MORRIS: Objection to the form of the 20 question. 21 THE WITNESS: Possibly. Somebody could have 22 printed them. 23 Q. (BY MR. RUKAVINA) Do you remember printing 24 Exhibits 4 or 5 sitting here today? 25 A. I don't recall printing them myself, no.</p>
<p style="text-align: right;">54</p> <p>1 A. Not specifically, but he didn't need to tell 2 me. He typically would tell me if he wanted Jim to 3 sign them. 4 Q. Sitting here today, do you have any memory of 5 giving Mr. Waterhouse these two promissory notes after 6 they were prepared? 7 A. I specifically don't remember walking into 8 his office and providing it to him, but he could have 9 found it on our shared drive if he wanted to. 10 Q. Do you have any memory or in your recent 11 review of documents did you see any email to the effect 12 of you sending either or both of these promissory notes 13 to Mr. Waterhouse after they were papered up? 14 A. I don't have any specific recollection, 15 again, but he had access to look at them. 16 Q. On the shared drive? 17 A. Yes. 18 Q. In May -- I'm going to ask this question 19 multiple different ways, so let's start with kind of 20 the general. 21 In May or by May of 2019, was there a 22 repository, electronic or paper, where the debtor kept 23 original promissory notes that were owed -- where money 24 was owed to it? 25 A. Original meaning paper?</p>	<p style="text-align: right;">56</p> <p>1 Q. Would there have been a reason to print them 2 out if, as you said, the notes were stored 3 electronically? 4 MR. MORRIS: Objection to the form of the 5 question. 6 THE WITNESS: There could be a reason. I 7 don't recall that I for any reason printed these 8 particular notes. 9 Q. (BY MR. RUKAVINA) So as of May 2019, is it 10 your testimony that notes that were papered up by the 11 corporate accounting group would have been saved 12 electronically on the system and not kept by way of 13 paper copies in some file? 14 A. Correct. That's right. 15 Q. This is additional metadata. And you 16 understand I have a bit of an accent. 17 What are we on? 18 (Off the record.) 19 Q. (BY MR. RUKAVINA) Ms. Hendrix, Exhibit 8 is 20 going to be additional metadata for the May 3, 2019, 21 note that we've been looking at, and Exhibit 9 will be 22 the same thing for the May 2 note that we've been 23 looking at. 24 That's 8. That's 9. 25 (Whereupon, Exhibits 8 &amp; 9 were marked for</p>

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<p style="text-align: right;">57</p> <p>1 identification.)</p> <p>2 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to</p> <p>3 represent to you again that my office has faithfully</p> <p>4 printed this metadata out without doctoring or changing</p> <p>5 anything, and I ask you to assume that. If I'm wrong</p> <p>6 on that, then your answers don't count.</p> <p>7 Ma'am, as I look at these two documents, it</p> <p>8 says last modified by Kristin Hendrix.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And that would have -- that could have only</p> <p>12 been you; correct, in that department?</p> <p>13 A. I hope so, yes.</p> <p>14 Q. Seeing these two documents, can you agree</p> <p>15 with me now that it was in fact you that papered up</p> <p>16 Exhibits 4 and 5?</p> <p>17 MR. MORRIS: Objection. Asked and answered.</p> <p>18 THE WITNESS: I would assume so since my name</p> <p>19 is on it, yes.</p> <p>20 Q. (BY MR. RUKAVINA) Both of these documents</p> <p>21 say last printed -- I'm sorry. If you see related</p> <p>22 dates, it says last printed May 2, 2019, 11:27 A.M. Do</p> <p>23 you have any memory or any understanding as to why that</p> <p>24 date would be there or what last printed might mean?</p> <p>25 A. I don't know why it says last printed the day</p>	<p style="text-align: right;">59</p> <p>1 Obviously, you're welcome to use them anytime you need</p> <p>2 to, but I think we're done with those notes.</p> <p>3 Going to hand you what we're going to mark as</p> <p>4 Exhibit 10, which is an email chain produced by the</p> <p>5 debtor.</p> <p>6 And I don't know how anyone on the video will</p> <p>7 see it. I apologize. I'll have to send it to you</p> <p>8 later.</p> <p>9 (Whereupon, Exhibit 10 was marked for</p> <p>10 identification.)</p> <p>11 Q. (BY MR. RUKAVINA) Now, if you start with</p> <p>12 this email chain, it starts on November 19, 2020 from</p> <p>13 Jack Donohue to you, copying Mr. Seery and various</p> <p>14 others.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And Mr. Donohue is asking you to provide him</p> <p>18 the financial records of HCMFA due to the funds owed</p> <p>19 the debtor.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall that email from Mr. Donohue to</p> <p>23 you?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall any context or subsequent</p>
<p style="text-align: right;">58</p> <p>1 before it was created. That doesn't make any sense. I</p> <p>2 have no idea.</p> <p>3 Unless, the only thing I could think of is if</p> <p>4 we changed this template. When I say "this," the</p> <p>5 \$2.4 million loan, which was papered on the 2nd, and</p> <p>6 then used it for the next day for the template to</p> <p>7 update the date, possibly. I have no idea.</p> <p>8 Q. Well, it may be -- and I understand that you</p> <p>9 don't have any memory; we're speculating a little bit.</p> <p>10 It may be, looking at Exhibits 8 and 9, that</p> <p>11 the \$2.4 million note was printed on May 2, and then</p> <p>12 after having been used as the template for the</p> <p>13 \$5 million note, the \$5 million note would not have</p> <p>14 been printed.</p> <p>15 Does that sound possible?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: Sure, it could be possible.</p> <p>19 Q. (BY MR. RUKAVINA) But you don't have any</p> <p>20 memory either way?</p> <p>21 A. No. And when these were printed they're</p> <p>22 printed to PDF, I believe, is probably what that means.</p> <p>23 Q. Okay.</p> <p>24 We're going to switch gears a little bit now,</p> <p>25 if you have to make a pile of those exhibits.</p>	<p style="text-align: right;">60</p> <p>1 discussions or how that email came to be, or do you</p> <p>2 just recall getting that email?</p> <p>3 A. I just recall getting the email.</p> <p>4 Q. You write back, hi Jack, Scott Ellington is</p> <p>5 going to follow up with the board on this request.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall why you told Jack that</p> <p>9 Mr. Ellington was going to follow up?</p> <p>10 A. From what I recall, I had asked Frank</p> <p>11 Waterhouse if it was okay to send these financials</p> <p>12 over, and he wanted me to check with Scott Ellington</p> <p>13 and that was Scott's response.</p> <p>14 Q. And did he tell you why he wanted you to</p> <p>15 check with Scott Ellington?</p> <p>16 A. Just to make sure that there were no issues</p> <p>17 with sending them over.</p> <p>18 Q. Mr. Seery writes back, can I get this ASAP.</p> <p>19 HCMFA is way overdue.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And Mr. Seery writes again, it's about a week</p> <p>23 later, and he says, this is an explicit direction from</p> <p>24 me as CEO of HCMLP. But it looks like you are the</p> <p>25 recipient of that December 2 email; correct?</p>

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<p style="text-align: right;">61</p> <p>1 A. Yes.</p> <p>2 Q. Do you remember him sending you that email</p> <p>3 and copying those people?</p> <p>4 A. Yes.</p> <p>5 Q. Do you remember anything happening in that</p> <p>6 week between his November 25 and December 2 email along</p> <p>7 the same discussion lines?</p> <p>8 A. I don't remember anything. I think I was</p> <p>9 probably left out of any discussions, and if there were</p> <p>10 any, it was with Scott Ellington and whomever he had</p> <p>11 discussions with.</p> <p>12 Q. Then subsequent, on December 2, Mr. Seery</p> <p>13 writes, all, Scott and I have spoken and agree that the</p> <p>14 information should be provided to James immediately.</p> <p>15 Would that have been James Romey, do you</p> <p>16 think?</p> <p>17 A. Yes.</p> <p>18 Q. And who was James Romey?</p> <p>19 A. He also worked for DSI.</p> <p>20 Q. And then he writes, Kristin, please proceed</p> <p>21 with James. If anyone has any questions or issues,</p> <p>22 please call me.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Did you proceed with James Romey?</p>	<p style="text-align: right;">63</p> <p>1 you, copying Waterhouse, Seery, a bunch of others.</p> <p>2 Where he says, at the direction of Jim Seery,</p> <p>3 please provide DSI with the requested information for</p> <p>4 each entity below.</p> <p>5 And you'll see the entity includes both of my</p> <p>6 clients, NexPoint Advisors and HCMFA. And the</p> <p>7 information includes bank statements, income</p> <p>8 statements, balance sheets, cash flows.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall this email?</p> <p>12 A. Vaguely, yes.</p> <p>13 Q. Did you have any concerns when you received</p> <p>14 this email?</p> <p>15 A. Concerns about the email, no. I probably</p> <p>16 checked with -- I would have checked with Frank to make</p> <p>17 sure it was okay to send this first.</p> <p>18 Q. Frank Waterhouse?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any understanding as to why</p> <p>21 Mr. Donohue requested bank statements, income</p> <p>22 statements, balance sheets for NexPoint and/or HCMFA?</p> <p>23 A. I do not.</p> <p>24 Q. Did he or anyone at DSI tell you why they</p> <p>25 were requesting that?</p>
<p style="text-align: right;">62</p> <p>1 A. I further made sure that Scott was okay, to</p> <p>2 confirm. He said yes, please do, and I did send them</p> <p>3 to James Romey.</p> <p>4 Q. So Mr. Seery has some of it in this email</p> <p>5 chain, but do you have any understanding as to why</p> <p>6 either DSI or Mr. Seery in November of 2020 was asking</p> <p>7 for the financial records of HCMFA?</p> <p>8 A. I do not, other than what's in this email.</p> <p>9 Q. Did you discuss with either DSI or Mr. Seery</p> <p>10 or Mr. Waterhouse in November or December 2020 whether</p> <p>11 the demand notes from HCMFA should be demanded, should</p> <p>12 be called?</p> <p>13 A. I did not have discussions.</p> <p>14 Q. Next exhibit is Exhibit 11. This is another</p> <p>15 email chain.</p> <p>16 And I apologize to the folks on the video.</p> <p>17 I'll have to get it to you during some break.</p> <p>18 MR. MORRIS: Hold on one second.</p> <p>19 MR. RUKAVINA: Sure. Off the record.</p> <p>20 (Off the record.)</p> <p>21 (Whereupon, Exhibit 11 was marked for</p> <p>22 identification.)</p> <p>23 Q. (BY MR. RUKAVINA) Exhibit 11, Ms. Hendrix,</p> <p>24 if you'll go to the beginning of this email chain, is</p> <p>25 an email on January 6, 2021, again from Mr. Donohue to</p>	<p style="text-align: right;">64</p> <p>1 A. Not that I can recall.</p> <p>2 Q. If we go forward in time, you'll see that</p> <p>3 Mr. Waterhouse is writing back to Mr. Donohue. And</p> <p>4 then Mr. Seery interjects and says, these are HCMLP</p> <p>5 business records. Please provide them as requested by</p> <p>6 Jack ASAP.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And it looks like you were not privy to</p> <p>10 subsequent communications where Frank and Jim were</p> <p>11 talking back and forth about this. You were not privy</p> <p>12 to those, like you weren't blind copied or anything to</p> <p>13 your recollection?</p> <p>14 A. No.</p> <p>15 Q. Did you in fact on or after January 6, 2021,</p> <p>16 provide Mr. Donohue or anyone on his team the</p> <p>17 information that he had requested as it relates to</p> <p>18 NexPoint and/or HCMFA?</p> <p>19 A. Without going back to check, I couldn't</p> <p>20 answer yes or no for certain.</p> <p>21 Q. So I think you mentioned when you received</p> <p>22 the email from Mr. Donohue you would have checked with</p> <p>23 Frank. And what do you remember asking Frank or</p> <p>24 checking with him about?</p> <p>25 A. I don't remember asking him specifically. In</p>

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<p style="text-align: right;">65</p> <p>1 fact, it's possible that Frank just responded on his 2 own here to Jack. Again, would have been a 3 conversation that I can't specifically recall. 4 Q. Sure. And you don't specifically remember 5 today providing Mr. Donohue any of that information; 6 right? 7 A. Right. 8 Q. You don't specifically remember today having 9 a discussion with Mr. Donohue or Seery or anyone else 10 at or about that time as to why they were wanting this 11 information? 12 A. Correct. 13 Q. Exhibit 12, Ms. Hendrix, is going to be the 14 December 3, 2020, letter by which Highland called the 15 notes. 16 MR. MORRIS: Objection to the form of the 17 question if there was one. 18 (Whereupon, Exhibit 12 was marked for 19 identification.) 20 Q. (BY MR. RUKAVINA) Are you familiar with 21 Exhibit 12, Ms. Hendrix? 22 A. No, I haven't seen this. 23 Q. Prior to today, you don't remember seeing 24 this? 25 A. No.</p>	<p style="text-align: right;">67</p> <p>1 to? 2 A. We had a standing weekly cash meeting with 3 Frank Waterhouse, myself, Jim Seery. I can't recall 4 everyone on it. Some of the DSI folks. We go through 5 cash forecasts. It's a 13-week cash forecast. We go 6 through it every week. 7 It's going to lay out incoming and outgoing 8 payments that are forecasted, of which these term loans 9 were in those forecasts, so they were discussed. 10 Q. And Mr. Morris produced some of those to me 11 this morning. I haven't had time to go through them. 12 But it is your recollection in November and 13 December of 2020 the fact of the NexPoint term note 14 being out there was known to Mr. Seery? 15 A. Yes. 16 Q. And the fact of an upcoming December 31, 17 2020, payment was known to Mr. Seery? 18 A. Yes. 19 Q. So with that background, in November and 20 December of 2020, do you remember discussing with 21 anyone anything to the effect of, oh, it really would 22 be better if NexPoint defaulted on that note so we 23 could call it? 24 A. No. 25 Q. Did Mr. Seery ever state to you anything in</p>
<p style="text-align: right;">66</p> <p>1 Q. I think you're answering no? 2 A. No, sorry, no. 3 Q. On or before December 3, 2020, did anyone 4 discuss with you whether Highland should call the 5 demand notes that were outstanding by HCMFA? 6 A. No. 7 Q. Do you recall in December 2020 any discussion 8 with anyone at the debtor about the NexPoint 9 \$30.7 million term note? 10 A. Repeat your question again, please. 11 Q. Sure. So you're familiar, and we'll talk 12 about it in some detail, with the NexPoint 13 \$30.7 million note? 14 A. Yes. 15 Q. And again, we'll talk about it, but at that 16 point in time that was a term note; correct? 17 A. Correct. 18 Q. Do you remember in the December 2020 or 19 November 2020 time frame discussing with anyone at the 20 debtor the status of that NexPoint note? 21 A. Yes, we would have discussed this on a weekly 22 basis in our cash meetings that we would have had, as 23 identifying that there are payments due on these loans 24 in December. 25 Q. What weekly cash meetings are you referring</p>	<p style="text-align: right;">68</p> <p>1 November or December of 2020 about how the debtor might 2 monetize that NexPoint note? 3 A. No. 4 Q. Did he discuss with you any potential sale of 5 that promissory note? 6 A. No. 7 Q. Did DSI ever discuss with you in November or 8 December 2020 any potential sale of that note? 9 A. No. 10 Q. Or how to monetize that note? 11 A. No. 12 Q. So -- well, strike that. 13 Did Mr. Seery or anyone at DSI, or anyone at 14 all, in November or December of 2020 state any words to 15 you to the effect that they were hoping that NexPoint 16 would default on that note? 17 A. Never. 18 Q. Or that it would be in the debtor's interest 19 for NexPoint to default on that note? 20 A. No. 21 Q. In November or December of 2020, do you 22 recall having any discussions with Mr. Seery or anyone 23 at DSI as to the collectibility of that note? And by 24 that I mean whether NexPoint can pay the note? 25 A. I don't specifically recall. It most likely</p>

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<p style="text-align: right;">69</p> <p>1 came up in cash conversations.</p> <p>2 Q. I think you were assistant controller back</p> <p>3 then?</p> <p>4 A. Yes.</p> <p>5 Q. Would a discussion of a borrower's ability to</p> <p>6 repay have been something within your general sphere of</p> <p>7 responsibility in that time frame?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: It depends on who the borrower</p> <p>11 is, and at that time we did -- we had knowledge over</p> <p>12 that information, so yes.</p> <p>13 Q. (BY MR. RUKAVINA) Well, you've seen some</p> <p>14 instructions or requests from Mr. Seery to you and DSI</p> <p>15 to you for financial information of NexPoint and HCMFA.</p> <p>16 We've gone through those documents; right?</p> <p>17 A. Yes.</p> <p>18 Q. Does that refresh your memory that there was</p> <p>19 any internal discussion that you were privy to about</p> <p>20 the ability of HCMFA and/or NexPoint to pay these</p> <p>21 notes?</p> <p>22 A. I don't recall that specifically being asked.</p> <p>23 It could have.</p> <p>24 Q. Did you ever at any point in time have any</p> <p>25 employment or officer or any title or role with</p>	<p style="text-align: right;">71</p> <p>1 not?</p> <p>2 A. Yes.</p> <p>3 Q. What's your understanding?</p> <p>4 A. Either November 30 or December 1, 2020, I</p> <p>5 received a phone call from Frank Waterhouse that said,</p> <p>6 no payments are going from any of the Advisors to</p> <p>7 Highland.</p> <p>8 Q. Can you be more specific with what he said?</p> <p>9 A. That's what he said.</p> <p>10 Q. So he said no payments from the Advisors to</p> <p>11 Highland?</p> <p>12 A. Yes.</p> <p>13 Q. Did he reference the promissory note</p> <p>14 expressly?</p> <p>15 A. No.</p> <p>16 Q. But no payments means?</p> <p>17 A. Nothing.</p> <p>18 Q. That would logically in your mind include the</p> <p>19 promissory note?</p> <p>20 A. Yes.</p> <p>21 Q. Did you ask him why?</p> <p>22 A. No.</p> <p>23 Q. Did he tell you why?</p> <p>24 A. No.</p> <p>25 Q. Did you, prior to January 1, 2021, did you</p>
<p style="text-align: right;">70</p> <p>1 NexPoint Advisors, LP?</p> <p>2 A. No.</p> <p>3 Q. Were you ever the controller or assistant</p> <p>4 controller for NexPoint Advisors LP?</p> <p>5 A. No.</p> <p>6 Q. Did you ever at any point in time have any</p> <p>7 employment, officer or any title or role at HCMFA?</p> <p>8 A. No.</p> <p>9 Q. Were you ever the controller or assistant</p> <p>10 controller of HCMFA?</p> <p>11 A. No.</p> <p>12 Q. So you might have indirectly provided</p> <p>13 services to those two as part of shared services, but</p> <p>14 never directly; is that fair?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: When you say never directly,</p> <p>18 meaning I was not employed by those entities?</p> <p>19 Q. (BY MR. RUKAVINA) Correct.</p> <p>20 A. That's correct.</p> <p>21 Q. Do you have any understanding -- first of</p> <p>22 all, NexPoint did not make a payment on December 31,</p> <p>23 2020; correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Do you have any understanding of why</p>	<p style="text-align: right;">72</p> <p>1 hear from anyone as to why Mr. Waterhouse gave that</p> <p>2 instruction?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Did you, after that November 30 or December 1</p> <p>5 phone call, did you follow up with him or anyone else</p> <p>6 about the upcoming note payment?</p> <p>7 A. I didn't have any reason to.</p> <p>8 Q. I'm going to -- let me find you a document</p> <p>9 for a moment.</p> <p>10 Just so the record is complete, let's include</p> <p>11 this promissory note. It's going to be Exhibit 13.</p> <p>12 This is the NexPoint promissory note.</p> <p>13 (Whereupon, Exhibit 13 was marked for</p> <p>14 identification.)</p> <p>15 Q. (BY MR. RUKAVINA) I take it you've seen this</p> <p>16 promissory note, Exhibit 13?</p> <p>17 A. Yes.</p> <p>18 Q. And I think you testified about this before,</p> <p>19 but just to summarize to save time.</p> <p>20 This would have been a note that you would</p> <p>21 not have papered but would have gone through legal</p> <p>22 because it was a roll-up. Is that generally accurate?</p> <p>23 A. Yes.</p> <p>24 Q. And do you have any memory at all of having</p> <p>25 anything to do with papering up this loan?</p>



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<p style="text-align: right;">73</p> <p>1 A. Not that I recall.</p> <p>2 Q. Would you have had, after 2017 and before</p> <p>3 2021, any role with respect to any payments or upcoming</p> <p>4 payments on this note, any role at all?</p> <p>5 A. Yes.</p> <p>6 Q. What would have been your role or roles?</p> <p>7 A. That would have been taking direction from</p> <p>8 Frank Waterhouse or possibly Jim Dondero saying, go</p> <p>9 ahead and make these payments that are due on these</p> <p>10 term notes.</p> <p>11 Q. Would you have recorded on any books or</p> <p>12 records payments that actually were made?</p> <p>13 A. Not me personally.</p> <p>14 Q. Who would have?</p> <p>15 A. Our accountant, which could have been one of</p> <p>16 two different people, depending on the time frame.</p> <p>17 Q. Would you have had any role with respect to</p> <p>18 recording those payments or is that just something that</p> <p>19 your group would have done?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: I would not have had a role.</p> <p>23 My group would have.</p> <p>24 Q. (BY MR. RUKAVINA) What about calculating</p> <p>25 amortization and/or interest payments that are due or</p>	<p style="text-align: right;">75</p> <p>1 A. At my house.</p> <p>2 Q. Did you answer on a cell phone or landline?</p> <p>3 A. My cell phone.</p> <p>4 Q. Is there any chance in hell that your cell</p> <p>5 phone would still have a record of that phone call,</p> <p>6 like what time it was and how long it lasted?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 Q. (BY MR. RUKAVINA) I apologize for using</p> <p>10 hell.</p> <p>11 MR. MORRIS: And to foundation.</p> <p>12 THE WITNESS: I have no idea.</p> <p>13 Q. (BY MR. RUKAVINA) Do you have your cell</p> <p>14 phone with you right now?</p> <p>15 A. In the other room.</p> <p>16 Q. I might ask you during the break to just --</p> <p>17 we'll take a short break before I'm done, and I'll ask</p> <p>18 you if you've had a chance to look for November and</p> <p>19 December 2020 phone logs between you and</p> <p>20 Mr. Waterhouse. I would ask you to do that, please.</p> <p>21 A. Sure.</p> <p>22 Q. And I apologize, I think you said you thought</p> <p>23 it was a short telephone call?</p> <p>24 A. I have no idea.</p> <p>25 Q. Did the telephone call or Mr. Waterhouse's</p>
<p style="text-align: right;">74</p> <p>1 upcoming? Who would have done that, you or someone</p> <p>2 else?</p> <p>3 A. Our accountant.</p> <p>4 Q. Do you have any memory of doing that?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Not during 2017 through 2019.</p> <p>8 Q. (BY MR. RUKAVINA) What about 2020?</p> <p>9 A. No.</p> <p>10 Q. Going back to that November 30 or December 1</p> <p>11 telephone call, do you recall who initiated the call?</p> <p>12 A. To me?</p> <p>13 Q. The one between you and Mr. Waterhouse.</p> <p>14 A. Frank called me.</p> <p>15 Q. Frank called you.</p> <p>16 And was it just to discuss -- or just to give</p> <p>17 you that instruction, no payments from the Advisors, or</p> <p>18 was there other things discussed?</p> <p>19 A. I could not tell you if something else was</p> <p>20 discussed on that phone call.</p> <p>21 Q. Do you remember if it was a long phone call</p> <p>22 or short?</p> <p>23 A. Couldn't tell you.</p> <p>24 Q. Do you remember where you were when he called</p> <p>25 you?</p>	<p style="text-align: right;">76</p> <p>1 instructions surprise you in any way?</p> <p>2 A. Nothing surprises me anymore, so no.</p> <p>3 Q. Did it surprise you back in November or</p> <p>4 December of 2020?</p> <p>5 A. No.</p> <p>6 Q. Did it pique your curiosity?</p> <p>7 A. Nope.</p> <p>8 Q. Just another instruction from your boss?</p> <p>9 A. Yep.</p> <p>10 Q. Exhibit 14 is going to be a document that</p> <p>11 we're not sure what it is and we're not sure who</p> <p>12 prepared it. It appears to be a ledger of charges</p> <p>13 against and payments on this promissory note.</p> <p>14 I'm just saying that so the people on the</p> <p>15 phone know what it is, but you don't have to take what</p> <p>16 I said as correct.</p> <p>17 (Whereupon, Exhibit 14 was marked for</p> <p>18 identification.)</p> <p>19 Q. (BY MR. RUKAVINA) So Ms. Hendrix, Exhibit 14</p> <p>20 was produced by the debtor. And I'm going to ask you,</p> <p>21 do you know what this is or have you seen it before?</p> <p>22 Can you help us state what it is?</p> <p>23 A. This looks like it is an amortization</p> <p>24 schedule of the NexPoint Advisors term loan.</p> <p>25 Q. Would this have been something that it</p>

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<p style="text-align: right;">77</p> <p>1 appears to you would have been maintained internally by</p> <p>2 the debtor, or does it look like it might have been</p> <p>3 prepared by DSI or someone else for some other reason?</p> <p>4 A. It looks like the debtor's amortization</p> <p>5 schedule that they kept.</p> <p>6 Q. Did the debtor keep an amortization schedule</p> <p>7 for the NexPoint promissory note, to your knowledge?</p> <p>8 A. Yes.</p> <p>9 Q. Did the debtor keep amortization schedules</p> <p>10 for other term promissory notes?</p> <p>11 A. Yes.</p> <p>12 Q. In what format, like Excel spreadsheets or</p> <p>13 Word documents? What is your recollection for NexPoint</p> <p>14 specifically?</p> <p>15 A. Excel.</p> <p>16 Q. Would that have been on the shared system or</p> <p>17 something?</p> <p>18 A. Yes.</p> <p>19 Q. And who would have been responsible on an</p> <p>20 ongoing basis to update the NexPoint amortization</p> <p>21 schedule?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: Depends on what time you're</p> <p>25 asking.</p>	<p style="text-align: right;">79</p> <p>1 change but it doesn't use brackets?</p> <p>2 A. It's a negative number. It's just a</p> <p>3 formatting issue.</p> <p>4 Q. What about also on that same page in the</p> <p>5 other column, principal paid, 5/31/2020, it's a</p> <p>6 positive number, 575,550.</p> <p>7 MR. MORRIS: Where are you?</p> <p>8 MR. RUKAVINA: On page 2 of this exhibit.</p> <p>9 MR. MORRIS: What date?</p> <p>10 MR. RUKAVINA: May 31, 2020. And it's the</p> <p>11 column over, principal paid. It's a positive number,</p> <p>12 575,000 and change.</p> <p>13 MR. MORRIS: Got it, thank you.</p> <p>14 Q. (BY MR. RUKAVINA) Do you see that,</p> <p>15 Ms. Hendrix?</p> <p>16 A. Yes.</p> <p>17 Q. Do you have an understanding of why that</p> <p>18 number would be positive?</p> <p>19 A. Actually, I think this looks like an entry to</p> <p>20 me where the interest is what we call picking. So on</p> <p>21 the anniversary date of this loan, which is May, from</p> <p>22 what I can tell, the accrued interest total, which is</p> <p>23 that 575-, is being rolled into principal.</p> <p>24 That's what I can tell from looking at it.</p> <p>25 Q. Okay. Do you have any understanding as to</p>
<p style="text-align: right;">78</p> <p>1 Q. (BY MR. RUKAVINA) Let's talk about the year</p> <p>2 of 2020.</p> <p>3 A. That would have been Hayley Eliason, our</p> <p>4 accountant at that time.</p> <p>5 Q. What about the year 2019?</p> <p>6 A. Still Hayley.</p> <p>7 MR. RUKAVINA: I'm going to just ask, to</p> <p>8 preserve the record, Mr. Morris, if he hasn't already,</p> <p>9 to produce any such Excel spreadsheet in the native</p> <p>10 form.</p> <p>11 Q. (BY MR. RUKAVINA) If we look at this,</p> <p>12 Ms. Hendrix -- and I'm a little confused as to what</p> <p>13 these entries mean. Maybe you could help me. But</p> <p>14 columns that say interest paid, principal paid, total</p> <p>15 paid, do you know what those columns mean?</p> <p>16 A. Exactly as they state. These are interest</p> <p>17 and principal payments made on the date that's listed,</p> <p>18 and then you've got a total.</p> <p>19 Q. And then they're in brackets because they're</p> <p>20 negative numbers?</p> <p>21 A. Correct.</p> <p>22 Q. So here's what I'm not understanding. Go to</p> <p>23 the second page.</p> <p>24 You see there's an entry under interest paid</p> <p>25 12/30/29 [verbatim] that says negative 530,000 and</p>	<p style="text-align: right;">80</p> <p>1 why that would have been done or why that would have</p> <p>2 been done on that day?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: Because that's the anniversary</p> <p>6 date of the loan. I would assume that that's how the</p> <p>7 loan is written.</p> <p>8 Q. (BY MR. RUKAVINA) And I think that that</p> <p>9 Section 1 of the promissory note does say, the unpaid</p> <p>10 principal balance of this note from time to time</p> <p>11 outstanding shall bear interest.</p> <p>12 At the rate of 6 percent per annum from the</p> <p>13 date hereof until maturity date, compounded annually on</p> <p>14 the anniversary of the date of this note.</p> <p>15 Do you see that?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: Yeah, I see that.</p> <p>19 Q. (BY MR. RUKAVINA) Assuming that this is the</p> <p>20 correct amortization schedule for the NexPoint note,</p> <p>21 and that the numbers in here are correct, if you look</p> <p>22 at the second page under the column total paid there</p> <p>23 are a number of entries for 2019.</p> <p>24 Do you see that, the far right column?</p> <p>25 A. At the top, yes.</p>

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<p style="text-align: right;">81</p> <p>1 Q. For example, 1.3 million, 2.1 million, 2 1.3 million. 3 Do you see that? 4 A. Yes. 5 Q. Assuming that that's correct, do you have any 6 memory or understanding whether in the year 2019, or 7 why NexPoint was making these payments on this 8 promissory note? 9 A. Without going back and reading through emails 10 I can only assume that, from looking at this, Highland, 11 the debtor, would have needed cash, and so this is one 12 way of getting cash to the debtor. 13 Q. This is kind of like what we discussed in the 14 beginning, that Mr. Dondero on a cash needed basis 15 would just transfer money between entities? 16 A. Yes. 17 Q. Do you have any memory in the first half of 18 2019 whether Highland, the debtor, had any particular 19 need for cash money at that time? 20 A. We generally always had a need for cash, so 21 yes. 22 Q. And so if NexPoint was transferring money 23 back to Highland on this note because Highland needed 24 the money, would those have been recorded as 25 prepayments by the debtor?</p>	<p style="text-align: right;">83</p> <p>1 Exhibit 15 and I'm going to represent to you that it's 2 the email that Mr. Morris sent to me today and I've not 3 doctored it in any way. 4 (Whereupon, Exhibit 15 was marked for 5 identification.) 6 MR. MORRIS: Do you have the email that it 7 was attached to? 8 MR. RUKAVINA: Somewhere. I can find it at a 9 break. 10 MR. MORRIS: I'll let the witness testify. 11 This was attached to an email. Not my email, but 12 another email. But I'll let the witness testify. 13 MR. RUKAVINA: Off the record. 14 (Off the record.) 15 Q. (BY MR. RUKAVINA) So you have Exhibit 15. 16 And during the break we established, I don't 17 have a copy of it right now, but you sent Exhibit 15 on 18 August 29, 2020, to Mr. Dondero by email, copying 19 Mr. Waterhouse, as well as a couple of other 20 attachments; is that correct? 21 A. Correct. 22 Q. Do you recall what prompted you to send that 23 email and this attachment? 24 A. Yes. 25 Q. What?</p>
<p style="text-align: right;">82</p> <p>1 MR. MORRIS: Objection to the form of the 2 question. 3 THE WITNESS: Yes. 4 Q. (BY MR. RUKAVINA) Sitting here today, do you 5 have any reason to believe based on the formatting or 6 anything on Exhibit 14 that it's not the amortization 7 schedule as it was maintained by the debtor? 8 A. I don't have any reason to not believe that 9 it was. 10 Q. Going to show you a few documents that I'm 11 hopefully going to burn through, but you're certainly 12 entitled to take all the time that you need. 13 So first is going to be a document that 14 Mr. Morris produced this morning. It's not Bates 15 labeled. I don't know why. 16 MR. MORRIS: As I said in my email, my 17 paralegal is sick and so I wanted you to have the 18 documents. We'll Bates stamp them later, but we have a 19 written record from my email of what we produced to 20 you. 21 MR. RUKAVINA: You're assuming that I read my 22 emails. 23 MR. MORRIS: Sorry about that. I confess, 24 sometimes I don't as well. 25 Q. (BY MR. RUKAVINA) So I'm going to hand you</p>	<p style="text-align: right;">84</p> <p>1 A. Frank Waterhouse called me on August 29, and 2 requested that I do so. 3 Q. Did he tell you why? 4 A. From what I recall, this was a time when Jim 5 was trying to come up with his bargain or pop land, 6 whatever he referenced it as. This was all information 7 that Frank said he wanted. 8 Q. Okay. So going back to Exhibit 15, what I'm 9 interested in is NexPoint Advisors, the 23,846,000 and 10 change number. 11 Do you see that? 12 A. Yes. 13 Q. Where did that number -- or where did this 14 Exhibit 15 come from, if you understand my question? 15 A. Sure. These numbers should all be balances 16 off of the corresponding notes that each entity owed to 17 the debtor. 18 Q. Did you or someone prepare Exhibit 15 19 specifically for that email? Or was Exhibit 15 already 20 existing somewhere on the system? 21 A. I believe that we prepared it specifically 22 for this request. 23 Q. Do you recall who? 24 A. It was either myself or our accountant. I 25 don't recall who put it together.</p>

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<p style="text-align: right;">85</p> <p>1 Q. Okay. And where would that 23 million and  2 change number for NexPoint have come from, an  3 amortization schedule?  4 A. Yes.  5 Q. And what about Highland Capital Management  6 Fund Advisors? You see \$10.5 million and change demand  7 on Exhibit 15?  8 A. Yes.  9 Q. Where would that \$10.5 million number have  10 come from, do you remember?  11 A. The same. It would have come off of the  12 amortization schedules for all of their notes.  13 Q. How was there an amortization schedule for a  14 demand note?  15 A. Because it's accruing interest.  16 Q. So sitting here today, you expect there would  17 be some amortization schedule like Exhibit 14 but for  18 HCMFA?  19 A. Yes.  20 Q. Now we're going to have an exhibit [verbatim]  21 chain that's going to be marked as Exhibit 16.  22 (Whereupon, Exhibit 16 was marked for  23 identification.)  24 MR. RUKAVINA: For the folks on the video,  25 Exhibit 16 is the email chain that Mr. Morris used last</p>	<p style="text-align: right;">87</p> <p>1 Do you see that, ma'am?  2 A. Yes.  3 Q. 23 million 683?  4 A. Yes.  5 Q. And you see, HCMFA due to HCMLP as of  6 June 30, 2020, 12,286,000?  7 MR. MORRIS: Objection to the form of the  8 question.  9 Q. (BY MR. RUKAVINA) Strike that.  10 It says 12,286. What do you take that 12,286  11 to mean?  12 A. I think that's a typo and it should have  13 said -- well, there's several things wrong with this,  14 from looking at it.  15 She left off three zeros on the end of it.  16 Should have said 12,286,000. Secondly, that amount is  17 our due to affiliates on HCMFA's books, not just due to  18 HCMLP.  19 Q. That was going to be my question, why that  20 12,286,000 number didn't jive with the 10,530,000  21 number on Exhibit 15?  22 A. Yes, there's another loan due to a different  23 affiliate.  24 Q. So that \$12,286,000 amount doesn't mean that  25 it's all due to Highland; is that correct?</p>
<p style="text-align: right;">86</p> <p>1 week regarding the Section 15(c) document.  2 Q. (BY MR. RUKAVINA) Are you familiar with this  3 Exhibit 16 email chain, Ms. Hendrix?  4 A. Yes.  5 Q. Why are you familiar with it?  6 A. Well, I'm copied on it, and I saw it  7 yesterday.  8 Q. Do you have any memory -- well, that's a  9 stupid question. But prior to yesterday, did you have  10 any memory of this?  11 A. Yes.  12 Q. And do you recall the context or the purpose  13 of this exhibit, or this email chain?  14 A. From what I remember this is the time where  15 information was being prepared for the retail board to  16 re-up the debtor's shared services.  17 Q. So, here -- you're certainly welcome to read  18 it in its entirety and if you feel like you want to or  19 need to, that's fine. But I only have one question.  20 Well, one question with two subparts.  21 I'm looking at Ms. Lauren Thedford's,  22 T-h-e-d-f-o-r-d's, email October 6, 2000 [verbatim]  23 where she says, I see the below from the 6/30  24 financials. NPA, due to HCMLP and affiliates as of  25 June 30, 2020.</p>	<p style="text-align: right;">88</p> <p>1 A. Correct.  2 Q. Exhibit 17 is going to be the January 7, 2021  3 notice from the debtor to NexPoint about the default.  4 (Whereupon, Exhibit 17 was marked for  5 identification.)  6 Q. (BY MR. RUKAVINA) You've been handed  7 Exhibit 17. Have you seen this document before?  8 A. Not that I believe.  9 Q. And I think we've asked this before, but just  10 to clarify.  11 Did anyone at the debtor, including Mr. Seery  12 or DSI, discuss with you after December 31, 2020 that  13 the payment had not been made and what, if anything,  14 the debtor should do about that?  15 MR. MORRIS: Objection to the form of the  16 question.  17 THE WITNESS: I can't recall specific  18 conversations that may or may not have been had around  19 that topic.  20 Q. (BY MR. RUKAVINA) Would -- so back then you  21 were the assistant controller, on January 7; right?  22 A. Yes.  23 Q. Do you think that back then Mr. Seery or DSI  24 would have sought your advice or input as to what they  25 should do about the missed payment?</p>

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<p style="text-align: right;">89</p> <p>1 A. No.</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: No.</p> <p>5 Q. (BY MR. RUKAVINA) That would have been</p> <p>6 outside of your purview?</p> <p>7 A. Yes.</p> <p>8 Q. And you see in this notice in the middle, it</p> <p>9 says an amount due as of January 8 in the \$24,471,000</p> <p>10 range.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any idea, I take it you don't,</p> <p>14 where that number came from?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: I don't know who provided that</p> <p>18 number or where it came from.</p> <p>19 Q. (BY MR. RUKAVINA) Do you have any</p> <p>20 understanding as to why that number is higher than the</p> <p>21 number on Exhibit 15?</p> <p>22 A. My guess would be that Exhibit 15 is just</p> <p>23 principal balances.</p> <p>24 Q. Okay.</p> <p>25 Exhibit 18, please.</p>	<p style="text-align: right;">91</p> <p>1 Q. Were you aware of it then?</p> <p>2 A. Was I aware of what?</p> <p>3 Q. That transfer of \$1.4 million and change.</p> <p>4 A. On January 14?</p> <p>5 Q. Yes.</p> <p>6 A. Yes.</p> <p>7 Q. Did you facilitate that transfer?</p> <p>8 A. Yes.</p> <p>9 Q. Who told you to make that transfer?</p> <p>10 A. Frank Waterhouse.</p> <p>11 Q. Did he tell you why?</p> <p>12 A. Nope.</p> <p>13 Q. He just said make the transfer?</p> <p>14 A. Yes.</p> <p>15 Q. Did he tell you that it was on account of the</p> <p>16 NexPoint note?</p> <p>17 A. Yes.</p> <p>18 Q. Did he tell you how to, if at all, to credit</p> <p>19 that note for that amount?</p> <p>20 A. No.</p> <p>21 Q. Sitting here today, you have no memory other</p> <p>22 than that Frank Waterhouse told you to transfer some</p> <p>23 \$1.4 million on the NexPoint note?</p> <p>24 A. Right.</p> <p>25 Q. And do you recall, was that oral or written</p>
<p style="text-align: right;">90</p> <p>1 (Whereupon, Exhibit 18 was marked for</p> <p>2 identification.)</p> <p>3 Q. (BY MR. RUKAVINA) Exhibit 18, Ms. Hendrix,</p> <p>4 is an email chain between you and Mr. Waterhouse on</p> <p>5 January 12, 2021. Do you remember this email chain?</p> <p>6 A. No.</p> <p>7 Q. Do you remember on January 12 Mr. Waterhouse</p> <p>8 emailing you, asking when the last amort payment due</p> <p>9 and what the amount was for NexPoint?</p> <p>10 A. No.</p> <p>11 Q. When was the last time -- well, strike that.</p> <p>12 Do you remember ever seeing this email</p> <p>13 between then and today?</p> <p>14 A. No.</p> <p>15 Q. Do you have any present memory of any</p> <p>16 communications with Mr. Waterhouse on or about</p> <p>17 January 12, 2021 regarding the NexPoint default or</p> <p>18 note?</p> <p>19 A. Not specific, no.</p> <p>20 Q. Any general memory?</p> <p>21 A. Not that I can pinpoint, no.</p> <p>22 Q. Were you aware that on or about January 14</p> <p>23 NexPoint transferred about \$1.4 million and change to</p> <p>24 the debtor?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">92</p> <p>1 or how would that have been?</p> <p>2 A. That was a phone call.</p> <p>3 Q. Do you recall who initiated the phone call?</p> <p>4 A. Frank called me.</p> <p>5 Q. Was that the only topic discussed in that</p> <p>6 phone call to your memory?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ask him why the payment or</p> <p>9 anything -- did you ask him anything at all?</p> <p>10 A. No.</p> <p>11 Q. And after you made the payment -- or I'm</p> <p>12 sorry, after you caused the payment to be made, did you</p> <p>13 take any further steps with respect to the NexPoint</p> <p>14 note?</p> <p>15 A. I forwarded the payment confirmation, showing</p> <p>16 that the money was sent from NexPoint Advisors to</p> <p>17 Highland, forwarded that payment confirmation from the</p> <p>18 bank to Jack Donohue at DSI, letting him know.</p> <p>19 Q. Did you let Mr. Donohue or anyone at DSI know</p> <p>20 about the transfer before the transfer was made?</p> <p>21 A. No.</p> <p>22 Q. And you sent that by email to Mr. Donohue?</p> <p>23 A. Yes.</p> <p>24 Q. Did Mr. Donohue thereafter have any</p> <p>25 discussion with you about that in any way?</p>



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<p style="text-align: right;">93</p> <p>1 A. I have no idea.</p> <p>2 Q. He didn't ask what this was for or anything</p> <p>3 like that?</p> <p>4 A. He may have asked what the amount</p> <p>5 represented. I can't specifically recall. But it's</p> <p>6 possible.</p> <p>7 Q. Okay. Do you recall any discussion about</p> <p>8 that time, January 14, with Mr. Donohue or</p> <p>9 Mr. Waterhouse or anyone as to whether that payment</p> <p>10 would in any way relieve NexPoint of the default or</p> <p>11 would not relieve NexPoint of the default?</p> <p>12 A. No.</p> <p>13 Q. Ms. Hendrix, I believe that I am done. I</p> <p>14 would like you, however, because it's important, to</p> <p>15 check your phone. Would you like a short, five-minute</p> <p>16 restroom break and just check --</p> <p>17 A. Yeah, and I might need help figuring out how</p> <p>18 to do that.</p> <p>19 Q. I'm not saying that it's possible, but I'm</p> <p>20 going to ask you on the record to look for that</p> <p>21 November 30 or December 1, 2020 phone call.</p> <p>22 MR. MORRIS: We're happy to do that.</p> <p>23 Q. (BY MR. RUKAVINA) But what I would like if</p> <p>24 you find it, I would like you to tell me the time, the</p> <p>25 date and the length of that call.</p>	<p style="text-align: right;">95</p> <p>1 proceedings today.</p> <p>2 I'm going to try to ask you some questions</p> <p>3 about these adversary proceedings. I'll try to make it</p> <p>4 as quick as possible so we don't keep you here.</p> <p>5 You understand that you're still under oath;</p> <p>6 is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. First topic I want to ask you about is one of</p> <p>9 the defenses in this case related to an oral agreement.</p> <p>10 Let me start off with this question.</p> <p>11 Are you aware that some of the defendants in</p> <p>12 these adversary proceedings have raised a defense that</p> <p>13 there was a subsequent oral agreement allowing the</p> <p>14 notes at issue to be potentially forgiven if certain</p> <p>15 events occurred?</p> <p>16 A. I've recently been made aware that this came</p> <p>17 up, yes.</p> <p>18 Q. When you say recently, approximately when?</p> <p>19 A. Within the last week.</p> <p>20 Q. And where did you learn that from?</p> <p>21 A. In my speakings with John Morris just</p> <p>22 preparing for today.</p> <p>23 MR. AIGEN: And John, I'm going to assume</p> <p>24 that those conversations are privileged?</p> <p>25 MR. MORRIS: That's a very fair assumption.</p>
<p style="text-align: right;">94</p> <p>1 A. Okay.</p> <p>2 Q. Thank you.</p> <p>3 We'll be back in five minutes.</p> <p>4 (Off the record.)</p> <p>5 Q. (BY MR. RUKAVINA) Ms. Hendrix, during the</p> <p>6 break did you look at your phone?</p> <p>7 A. I did.</p> <p>8 Q. Did you find anything?</p> <p>9 A. Sadly, it only goes back to October 5 of</p> <p>10 2021.</p> <p>11 Q. Not surprised. Thank you.</p> <p>12 Have I been courteous to you today?</p> <p>13 A. Yes.</p> <p>14 MR. RUKAVINA: I pass the witness.</p> <p>15 MR. MORRIS: Thank you.</p> <p>16 MR. AIGEN: Are we ready to move forward?</p> <p>17 MR. MORRIS: Yes. You're a little dark</p> <p>18 there.</p> <p>19 MR. RUKAVINA: Can we increase the volume on</p> <p>20 that thing?</p> <p>21 (Off the record.)</p> <p>22 EXAMINATION</p> <p>23 Q. (BY MR. AIGEN) Good afternoon, Ms. Hendrix.</p> <p>24 My name is Michael Aigen. I represent Mr. Dondero,</p> <p>25 HCMS and HCRE Partners in several of the adversary</p>	<p style="text-align: right;">96</p> <p>1 Q. (BY MR. AIGEN) Other than the conversation</p> <p>2 you just referred to with Mr. Morris, have you ever had</p> <p>3 any other conversations with anyone about this alleged</p> <p>4 oral agreement that Defendants are contending occurred?</p> <p>5 A. No.</p> <p>6 Q. So prior to that conversation with Mr. Morris</p> <p>7 you weren't even aware of this alleged defense related</p> <p>8 to an oral agreement. Is that fair to say?</p> <p>9 A. That's right.</p> <p>10 Q. This is a similar question but slightly</p> <p>11 different, just to sort of finish this topic. I'm not</p> <p>12 asking about this oral agreement as a defense, I'm just</p> <p>13 asking more generally.</p> <p>14 Other than this conversation, were you aware</p> <p>15 generally of any conversations that anyone had where</p> <p>16 the notes at issue might be forgiven if certain events</p> <p>17 occurred?</p> <p>18 MR. MORRIS: Objection to the form of the</p> <p>19 question.</p> <p>20 THE WITNESS: No.</p> <p>21 Q. (BY MR. AIGEN) Is it fair to say that you</p> <p>22 haven't had any conversations about this subsequent</p> <p>23 oral agreement with anyone other than Mr. Morris?</p> <p>24 A. That's fair.</p> <p>25 Q. You never discussed it with Mr. Seery?</p>

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<p style="text-align: right;">97</p> <p>1 A. No.</p> <p>2 Q. Never discussed it with Mr. Klos?</p> <p>3 A. No. Well, sorry, Mr. Klos was present when</p> <p>4 John and I talked about it. But that's it.</p> <p>5 Q. Have you ever made any investigation or</p> <p>6 effort in order to determine if this oral agreement</p> <p>7 actually occurred?</p> <p>8 A. No.</p> <p>9 Q. If there was such an oral agreement to</p> <p>10 potentially forgive the notes, do you believe that you</p> <p>11 would have known about such an oral agreement as part</p> <p>12 of your duties and responsibilities?</p> <p>13 A. Yes, I would hope so.</p> <p>14 Q. Why do you say that?</p> <p>15 A. That's something that should be disclosed in</p> <p>16 audited financial statements, and me and my team are</p> <p>17 responsible for preparing those financial statements</p> <p>18 and presenting them to the auditors as fair and</p> <p>19 accurate.</p> <p>20 Q. And is it fair to say that this oral</p> <p>21 agreement should have been disclosed to PwC if it was</p> <p>22 determined that it was material?</p> <p>23 A. Yes.</p> <p>24 Q. And have you done any sort of analysis to</p> <p>25 determine whether the oral agreement at issue here</p>	<p style="text-align: right;">99</p> <p>1 A. Yes.</p> <p>2 Q. Can you tell me why?</p> <p>3 A. Sure. It goes along with the same statement</p> <p>4 as HCMFA and NPA and the phone call that I got from</p> <p>5 Frank Waterhouse saying there's no payments coming from</p> <p>6 any of the affiliates to the debtor.</p> <p>7 Q. I may have written that down wrong when you</p> <p>8 talked about that before, but I believe your earlier</p> <p>9 testimony when you described that conversation was that</p> <p>10 there was no more payments coming from the Advisors,</p> <p>11 not affiliates.</p> <p>12 Let me ask you then, what was the</p> <p>13 conversation? Was it no more payments from affiliates</p> <p>14 or Advisors?</p> <p>15 A. It could have been either. I probably did</p> <p>16 say Advisors. But regardless, those payments would</p> <p>17 have been directed to me to be made, either by Frank</p> <p>18 Waterhouse or Jim Dondero.</p> <p>19 And I would assume that nobody directed me to</p> <p>20 make those payments because we weren't making any</p> <p>21 payments from Jim's related parties. I don't know for</p> <p>22 a fact, but that's what I would assume. Those were all</p> <p>23 under the same umbrella.</p> <p>24 Q. And again, let's back up a second.</p> <p>25 When you refer to Advisors, fair to say that</p>
<p style="text-align: right;">98</p> <p>1 would have been material for purposes of a PwC audit?</p> <p>2 A. I've not done any work, just finding out</p> <p>3 about it, but from what it sounds like, it would be</p> <p>4 material.</p> <p>5 Q. That's your opinion, that it would have been</p> <p>6 material; is that fair to say?</p> <p>7 A. Fair.</p> <p>8 Q. Have you had any discussions with anyone else</p> <p>9 about whether the oral agreement would have been</p> <p>10 material?</p> <p>11 A. No.</p> <p>12 Q. Changing topics a little bit here, are you</p> <p>13 aware --</p> <p>14 (Off the record.)</p> <p>15 Q. (BY MR. AIGEN) Are you aware that a few of</p> <p>16 the loans at issue here, specifically related to HCMS</p> <p>17 and HCRE, were term loans as opposed to demand loans?</p> <p>18 A. Yes.</p> <p>19 Q. And are you aware that for those particular</p> <p>20 loans, there were payments that were supposed to be</p> <p>21 made but weren't on December 31, 2020?</p> <p>22 A. Yes.</p> <p>23 Q. Do you have any understanding as to why those</p> <p>24 payments weren't made with respect to the HCMS and HCRE</p> <p>25 term loans on December 31, 2020?</p>	<p style="text-align: right;">100</p> <p>1 that does not include HCMS and HCRE; is that correct?</p> <p>2 A. When I say Advisors, I am referring to HCMFA</p> <p>3 and NPA.</p> <p>4 Q. And when you use the term "affiliates,"</p> <p>5 you're referring to all four; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Just want to make sure we're on the same</p> <p>8 page.</p> <p>9 When you answered the previous question you</p> <p>10 started to get into assumptions and things like that.</p> <p>11 Let me start off with what your specific recollection</p> <p>12 of that phone call was. Tell me as best as you can</p> <p>13 what you remember Frank telling you?</p> <p>14 A. I remember it as being no payments from the</p> <p>15 Advisors to the debtor.</p> <p>16 Q. So you don't remember the instruction being,</p> <p>17 don't make payments from the affiliates. It was, don't</p> <p>18 make payments from the Advisors; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. So is it fair to say that you don't remember</p> <p>21 any instructions telling you not to make any payments</p> <p>22 from HCMS or HCRE?</p> <p>23 A. That's fair.</p> <p>24 Q. So if that is the case, why weren't payments</p> <p>25 made from HCMS or HCRE for December 31, 2020, payment?</p>

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<p style="text-align: right;">101</p> <p>1 A. Sure. Typically what would have happened is</p> <p>2 Frank would be talking to Jim Dondero about making</p> <p>3 these payments and getting his approval to do so,</p> <p>4 because Jim Dondero is, you know, directing payments</p> <p>5 out of these entities.</p> <p>6 I have never -- had never been given the</p> <p>7 direction to effectuate those payments by anybody.</p> <p>8 Q. Is it fair to say, then, that you're not</p> <p>9 aware of any instructions from anyone saying that the</p> <p>10 HCMS and HCRE payments should not be made on</p> <p>11 December 31, 2020?</p> <p>12 A. That's fair.</p> <p>13 Q. So the reason the payments weren't made is</p> <p>14 because you never got an affirmative instruction to</p> <p>15 actually make that payment; is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you're not aware of Mr. Dondero</p> <p>18 instructing anyone that HCMS and HCRE should not have</p> <p>19 made the December 31, 2020, payments; is that correct?</p> <p>20 A. I'm not aware personally, no. Correct.</p> <p>21 Q. You say personally. In any way are you aware</p> <p>22 of such a specific instruction?</p> <p>23 A. No.</p> <p>24 Q. If that payment was to be made, who at the</p> <p>25 debtor would have been responsible for making those</p>	<p style="text-align: right;">103</p> <p>1 Q. And is that because it's only your job to</p> <p>2 make payments that you're told to specifically make; is</p> <p>3 that correct?</p> <p>4 A. Yes, in this case, that is correct.</p> <p>5 Q. Is it fair to say then that as part of your</p> <p>6 job responsibilities you've never made a payment to</p> <p>7 anyone without being specifically told by Mr. Dondero</p> <p>8 and Mr. Waterhouse?</p> <p>9 A. Sorry, say that again.</p> <p>10 Q. As part of your job responsibilities, have</p> <p>11 you ever made a payment to anyone without the specific</p> <p>12 instruction of Mr. Waterhouse or Mr. Dondero?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: Yes, we make payments all the</p> <p>16 time.</p> <p>17 Q. (BY MR. AIGEN) So why is this different in</p> <p>18 that this payment was not made without the specific</p> <p>19 instructions from Mr. Waterhouse and Mr. Dondero, even</p> <p>20 though you believed the payment was due on December 31,</p> <p>21 2020?</p> <p>22 A. The difference between making a loan payment</p> <p>23 and making normal course -- or sorry, normal, ordinary</p> <p>24 course, you know, overhead expense payments is that</p> <p>25 something like that is not necessarily what we would</p>
<p style="text-align: right;">102</p> <p>1 payments on behalf of HCMS and HCRE?</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: The corporate accounting team.</p> <p>5 Q. (BY MR. AIGEN) And that included you?</p> <p>6 A. Yes.</p> <p>7 Q. And in December of 2020, were you aware that</p> <p>8 those payments were due on December 31, 2020?</p> <p>9 A. Yes.</p> <p>10 Q. Did you make any attempts or efforts to</p> <p>11 determine whether Mr. Dondero wanted those payments to</p> <p>12 be made?</p> <p>13 A. I did not, no.</p> <p>14 Q. Why not?</p> <p>15 A. That would have been something that Frank</p> <p>16 Waterhouse would have done directly with Jim Dondero</p> <p>17 himself.</p> <p>18 Q. Did you have any conversations with anyone</p> <p>19 about whether the December 31 payments for HCMS and</p> <p>20 HCRE would be made in December of 2020?</p> <p>21 A. Not that I can recall.</p> <p>22 Q. And you didn't think it was your</p> <p>23 responsibility to check on those payments and find out</p> <p>24 if they should have been made?</p> <p>25 A. Right, correct.</p>	<p style="text-align: right;">104</p> <p>1 take to Jim Dondero to approve.</p> <p>2 He doesn't have time to approve every single</p> <p>3 overhead payment that we're making out of every single</p> <p>4 entity. That's what Frank is for.</p> <p>5 Something that's once a year that's more</p> <p>6 material in amount, such as a loan payment, that is</p> <p>7 something that needs to get approved by Jim Dondero.</p> <p>8 Q. You say needs to get approved. What's your</p> <p>9 basis for that, something in a policy manual, something</p> <p>10 someone told you?</p> <p>11 A. It's a policy that my team followed. I don't</p> <p>12 think that it's written in an actual manual anywhere,</p> <p>13 but anything that's not ordinary course needs to get</p> <p>14 approved by Jim Dondero.</p> <p>15 Q. Is that something that's written in a policy</p> <p>16 anywhere?</p> <p>17 A. Not that I know of.</p> <p>18 Q. Were you ever told that payments in the</p> <p>19 ordinary course can be made without Mr. Dondero's</p> <p>20 approval but loan payments cannot?</p> <p>21 A. Yes, I do recall years ago that Frank and I,</p> <p>22 possibly Jim, this was years ago, had a conversation</p> <p>23 that anything ordinary course is up to Frank to</p> <p>24 approve. And this is, quite frankly, up to Frank.</p> <p>25 Whatever he felt Jim needed to sign off on,</p>

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<p style="text-align: right;">105</p> <p>1 that's what Jim would sign off on. This was not my 2 responsibility to make that decision. 3 Q. And in December -- prior to the December 31, 4 2020, due date you didn't have any conversations with 5 anyone about whether this -- these payments that were 6 due should be made; is that correct? 7 A. Correct. 8 Q. And you didn't try to check with anyone to 9 see whether anyone wanted these payments to be made; is 10 that correct? 11 A. Correct. 12 Q. Subsequent to the payment being missed, did 13 you ever have any conversations with anyone about why 14 the payment was not made? 15 A. Not that I recall. 16 Q. So is it fair to say that sitting here today 17 you have no idea why the payments were not made for 18 HCMS and HCRE on December 31, 2020? 19 MR. MORRIS: Objection to the form of the 20 question. 21 THE WITNESS: I don't have any specific 22 evidence telling me why they weren't. I can make 23 assumptions but that's not going to help. 24 Q. (BY MR. AIGEN) Well, did you ever have any 25 conversations with anyone about why those payments were</p>	<p style="text-align: right;">107</p> <p>1 A. I can't tell you the exact date, but, yes, I 2 do have a recollection of Frank calling or emailing me 3 to have, I believe it was the HCRE wire sent out for 4 their payment. 5 Q. What about the HCMS payment? 6 A. I don't recall that one as much. 7 Q. Other than the payment being made, do you 8 have any recollection of any other conversations about 9 why the payment was being made? 10 A. No. 11 Q. Are you aware of any conversations that 12 anyone had regarding whether these payments would 13 deaccelerate loans? 14 A. No. 15 Q. Is that something you would normally be part 16 of, conversations like that? 17 A. No. 18 Q. Changing topics here. Not sure if this is an 19 area that you know anything about. 20 Are you familiar with the term, as it's used 21 at Highland, NAV ratio trigger period? 22 A. No. 23 Q. This may go very quick. If I represent to 24 you that it's a term that's used in the -- in the 25 fourth amended limited partnership agreement for</p>
<p style="text-align: right;">106</p> <p>1 not made? 2 A. No. 3 Q. You have no idea why they weren't made other 4 than just speculation; is that fair to say? 5 A. Correct. 6 MR. MORRIS: Objection. Asked and answered. 7 THE WITNESS: Correct. 8 Q. (BY MR. AIGEN) And are you aware that with 9 respect to those two loans, some payments were actually 10 made in the next month, in January of 2021? 11 A. Yes. 12 Q. What role, if any, did you have with respect 13 to those payments? 14 A. Frank Waterhouse would call me and tell me to 15 have my team effectuate a wire. 16 Q. And you say would call you. Do you remember 17 this conversation or are you just assuming it occurred? 18 MR. MORRIS: Objection to the form of the 19 question. 20 THE WITNESS: If we sent a payment out, Frank 21 would have told me to do it. I would not have done it 22 on my own. 23 Q. (BY MR. AIGEN) Sitting here today, do you 24 have a specific recollection of the conversation where 25 someone told you to make the January 2021 payments?</p>	<p style="text-align: right;">108</p> <p>1 Highland Capital Management, would that refresh your 2 recollection at all? 3 A. No. 4 Q. Fair to say, then, that you have no knowledge 5 as to whether NAV ratio trigger period was ever reached 6 at any time prior to bankruptcy buyouts? 7 A. No, I don't know. 8 Q. Have you ever had any conversations with 9 Nancy Dondero? 10 A. I have not. 11 Q. Never met her? 12 A. No. I may have exchanged an email with her 13 on an invoice, but that's the extent of it. No 14 conversations. 15 Q. In the years leading up to the bankruptcy of 16 Highland Capital, was there any time period where 17 Highland was unable to pay its salaries? 18 A. Salaries? 19 Q. Salaries of its employees? 20 A. No. 21 Q. In the time leading up to the Highland 22 bankruptcy, was there any time period where Highland 23 wasn't able to pay bonuses owed to any of its 24 employees? 25 A. Not that I know of. Not that I can recall.</p>

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<p style="text-align: right;">109</p> <p>1 Q. Are you aware of any time period leading up  2 to the Highland bankruptcy where Highland was unable to  3 pay its bills?  4 A. There's times where we would be in a cash  5 flow crunch and we would stretch our AP, but eventually  6 it would get paid.  7 Q. And I think this is the last topic and we can  8 probably move through this pretty quickly.  9 Are you aware of any loans made by Highland  10 to any of its employees or officers that were forgiven  11 in part or all?  12 A. Yes.  13 Q. Which officers or employees are you aware of?  14 A. I recall there were two employees. I can't  15 remember one of them, but I believe another, the second  16 one, was Paul Adkins. Again, I'm just recalling this  17 was years ago.  18 Q. And these two are the only ones you're aware  19 of?  20 A. Or I'm sorry, not Paul Adkins, Tim Lawler.  21 It's possible Paul Adkins was the other one, but I  22 can't tell you for sure.  23 Q. Tim Lawler and some other employee that you  24 can't remember the name of are the only two that you're  25 aware of?</p>	<p style="text-align: right;">111</p> <p>1 behalf of HCMFA in May of 2019 to bind HCMFA to such  2 notes?  3 A. No.  4 Q. Thank you, ma'am.  5 EXAMINATION  6 Q. (BY MR. MORRIS) Ms. Hendrix, can you get out  7 of your pile, Exhibit Number 3.  8 And this is the email from Dave Klos to  9 corporate accounting on May 2nd concerning the  10 \$2.4 million that was going to be transferred from  11 HCMLP to HCMFA?  12 A. Yes.  13 Q. And how did Mr. Klos characterize that  14 transfer?  15 A. He called it a new intercompany loan.  16 Q. What does a new intercompany loan mean to  17 you?  18 A. That means we are creating a new loan  19 document, sending money out, tracking it as a  20 brand-new, fresh loan.  21 Q. And he sent this email to an email group  22 called corporateaccounting@hcmlp.com. Do I have that  23 right?  24 A. Yes.  25 Q. Were you included in that email group?</p>
<p style="text-align: right;">110</p> <p>1 A. Yes.  2 Q. This other employee, I know you don't  3 remember the name. Is there any other description that  4 you can give me, what their position was, how long they  5 worked, or is it just you remember those loans?  6 A. I just remember we had two employee loans.  7 Q. Approximately when was this?  8 A. I couldn't even tell you. All the years just  9 commingle together.  10 Q. More than five years ago?  11 A. Yes.  12 Q. More than 10 years ago?  13 A. I couldn't say.  14 MR. AIGEN: Why don't we take a five-minute  15 break and then I'll either be done or have just a few  16 wrap-up questions.  17 MR. RUKAVINA: Okay.  18 (Off the record.)  19 FURTHER EXAMINATION  20 Q. (BY MR. RUKAVINA) Ms. Hendrix, in May of  21 2019, would you on behalf of Highland alone,  22 unilaterally, have the authority to lend to HCMFA 2.4-  23 and/or \$5.0 million?  24 A. No.  25 Q. And would you have had any authority on</p>	<p style="text-align: right;">112</p> <p>1 A. I was.  2 Q. Can you identify everybody else who you  3 recall being in that email group?  4 A. Yes.  5 Q. Who else was in that email group?  6 A. Dave Klos, Frank Waterhouse, myself, Hayley  7 Eliason, and Blair Roeber.  8 Q. Okay. Did Mr. Waterhouse ever tell anybody,  9 to the best of your knowledge, in May 2019 that the  10 transaction should not be booked as a loan?  11 A. No, not to my knowledge.  12 Q. You testified earlier that there was, you  13 recall, a similar email the next day with respect to a  14 \$5 million transaction.  15 Do you recall that?  16 A. Yes.  17 Q. Do you recall if that email also went to  18 corporate accounting?  19 A. I believe so, yes.  20 Q. And to the best of your knowledge, would  21 Mr. Waterhouse have been informed on May 3, 2019, that  22 the transaction was being booked by the corporate  23 accounting department as a loan?  24 A. Yes.  25 Q. Did Mr. Waterhouse tell you at that time or</p>



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<p style="text-align: right;">113</p> <p>1 at any time thereafter that it was a mistake to book it 2 as a loan? 3 A. No. 4 Q. Did Mr. Waterhouse tell you at that time or 5 at any time thereafter that he didn't intend to sign 6 the promissory notes? 7 A. No. 8 MR. RUKAVINA: Objection. To the last 9 question, objection to form. 10 Go ahead. 11 Q. (BY MR. MORRIS) Okay. The promissory notes, 12 to be clear, are the two promissory notes that you 13 testified to earlier that have been marked as exhibits 14 in this deposition for \$5 million and \$2.4 million 15 respectively. 16 With that definition as promissory notes, did 17 Mr. Waterhouse ever tell you at any time that it was a 18 mistake to sign those notes? 19 MR. RUKAVINA: I'll object to the form. 20 Go ahead. 21 THE WITNESS: No. 22 Q. (BY MR. MORRIS) Did Mr. Waterhouse or 23 anybody -- withdrawn. I'll go back to the first 24 question. 25 Did Mr. Waterhouse or anybody in the world</p>	<p style="text-align: right;">115</p> <p>1 HCMFA. I oversaw all other aspects of the audit my 2 team carried out. 3 Any requests from the auditors, emails with 4 questions, any issues that arose, all of that went 5 through me. 6 Q. And did Mr. Waterhouse play a role in 7 relation to the annual audit? 8 A. Yes. 9 Q. What is your understanding of 10 Mr. Waterhouse's role? 11 A. Let's see. He was in charge of reviewing the 12 financial statements as they were done, so he saw the 13 end product. He would sign off on the management rep 14 letter. He signed engagement letters. 15 If there were any big issues, those got -- 16 those would be brought to Frank's attention for sure. 17 Q. Okay. And are you a CPA? 18 A. Yes. 19 Q. And are you familiar with management rep 20 letters? 21 A. Yes. 22 Q. What is your understanding of what a 23 management rep letter is? 24 A. That's basically telling the auditors that 25 everything in the audited financial report is accurate</p>
<p style="text-align: right;">114</p> <p>1 ever tell you at any time since May of 2019 that it was 2 a mistake to issue the promissory notes as we've 3 defined them? 4 A. No. 5 Q. Did Mr. Waterhouse or anybody in the world 6 tell you that Mr. Waterhouse wasn't authorized to affix 7 his signature to those promissory notes? 8 MR. RUKAVINA: And I'll object. Assumes 9 facts not in evidence, i.e., the signature. That's 10 what I've been objecting to. 11 But go ahead and answer. 12 THE WITNESS: Say it again. 13 Q. (BY MR. MORRIS) Did Mr. Waterhouse or 14 anybody in the world tell you at any time that he 15 wasn't authorized to have his signature affixed to the 16 promissory notes? 17 MR. RUKAVINA: Same objection. 18 THE WITNESS: No. 19 Q. (BY MR. MORRIS) Did you have anything to do 20 with Highland's annual audit? 21 A. Yes. 22 Q. What role did you play with respect to 23 Highland's annual audit? 24 A. I personally was in charge of completely 25 writing the entire audit report for the debtor and for</p>	<p style="text-align: right;">116</p> <p>1 to the best of their knowledge, they've presented 2 everything that they have fair and accurately, they're 3 not withholding any information. 4 Q. And do you recall that the -- Highland's 2018 5 audit was completed in early June 2019? 6 A. Yes. 7 Q. And did you cause the two promissory notes 8 that we're talking about here to be delivered to 9 PricewaterhouseCoopers in connection with the audit? 10 A. Yes. 11 Q. And were those two promissory notes delivered 12 to PricewaterhouseCoopers because they constituted 13 subsequent events? 14 A. Yes. 15 Q. Do you recall whether those promissory notes 16 were described in Highland's 2018 audited financial 17 statements? 18 A. Yes. 19 Q. And did Mr. Waterhouse or Mr. Dondero ever 20 tell you at any time that there was a mistake in the 21 audited financial statements? 22 A. No. 23 Q. Did they ever tell you -- did Mr. Waterhouse 24 or Mr. Dondero or anybody in the world ever tell you at 25 any time that the two notes were mischaracterized in</p>

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<p style="text-align: right;">117</p> <p>1 the 2018 audited financial statements of Highland 2 Capital? 3 A. No. 4 Q. Do you know whether HCMFA also had its annual 5 financial statements audited by PricewaterhouseCoopers? 6 A. Yes. 7 Q. Did you play any role in connection with that 8 audit? 9 A. Yes. 10 Q. What role did you play in connection with 11 HCMFA's audit of the 2018 financial statements? 12 A. Same exact role as with the debtors -- 13 Q. And -- 14 A. -- writing the audit report, overseeing all 15 other audit functions. 16 Q. And did you and your group cause HCMFA to 17 deliver to PricewaterhouseCoopers the two promissory 18 notes that we've been discussing from May 2019? 19 A. Yes. 20 Q. Did Mr. Waterhouse or Mr. Dondero or anybody 21 in the world ever tell you that it was a mistake to 22 deliver those promissory notes to PwC in connection 23 with HCMFA's 2018 audit? 24 A. No. 25 Q. Were those notes delivered -- withdrawn.</p>	<p style="text-align: right;">119</p> <p>1 reference to these notes in HCMFA's 2018 audited 2 financial statements? 3 MR. RUKAVINA: Same objection. 4 THE WITNESS: No. 5 Q. (BY MR. MORRIS) Okay. Do you recall, did 6 anybody in the world ever tell you that the 7 transactions described in Exhibit 3 and the other 8 document that you recall should never have been booked 9 as a loan? 10 A. No. 11 Q. Did anybody in the world tell you that you 12 made a mistake when you created those promissory notes? 13 A. No. 14 Q. Can you pull out what was marked as 15 Exhibit 16. 16 Do you understand that the Advisors provide 17 services to certain retail funds? 18 A. Yes. 19 Q. And do you recall that the services are 20 subject to an agreement that's subject to annual 21 review? 22 A. Yes. 23 Q. So looking at Exhibit 16, did you understand 24 that the retail board had asked Highland to disclose -- 25 I'll just read it from the document on page 2,</p>
<p style="text-align: right;">118</p> <p>1 Were those notes delivered to 2 PricewaterhouseCoopers because they constituted 3 subsequent events in connection with the 2018 audit? 4 A. Yes. 5 Q. Do you recall whether PricewaterhouseCoopers 6 included as a liability on HCMFA's balance sheet the 7 obligations reflected in the two promissory notes at 8 issue? 9 MR. RUKAVINA: Objection. Best evidence. 10 Answer. 11 THE WITNESS: On the 2018 financials? 12 Q. (BY MR. MORRIS) Correct. 13 A. Those would not have been included as 14 liabilities in the 2018 financials. 15 Q. Do you know if HCMFA completed their audit 16 for 2019? 17 A. No. 18 Q. Okay. Did the notes appear in HCMFA's 2018 19 audited financials under the subsequent events section? 20 A. Yes. 21 MR. RUKAVINA: Objection. Best evidence. 22 Go ahead. 23 Q. (BY MR. MORRIS) Did Mr. Dondero or -- did 24 Mr. Waterhouse or Mr. Dondero or anybody in the world 25 ever tell you that it was a mistake to include</p>	<p style="text-align: right;">120</p> <p>1 Bates number ending 881. 2 There's an email from Ms. Thedford that says, 3 quote, are there any material amounts -- withdrawn. 4 Are there any material outstanding amounts 5 currently payable or due in the future, open paren, 6 e.g., notes, close paren, to HCMLP by HCMFA or NexPoint 7 Advisors or any other affiliate that provides services 8 to the funds? 9 Do you see that? 10 A. Yes. 11 Q. And were you generally aware that that was 12 part of the annual renewal process? 13 A. Yes. 14 Q. And you made some comments earlier about 15 Ms. Thedford's response on the first page. 16 Do you recall that? 17 A. Yes. 18 Q. And you actually were able to correct certain 19 mistakes that you perceived in her response. 20 Do I have that right? 21 A. Correct. 22 Q. Do you know -- do you see where it says, 23 HCMFA due to HCMLP as of June 30, 2020, let's just call 24 it \$12.3 million. 25 Do you see that?</p>

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<p style="text-align: right;">121</p> <p>1 A. Yes.</p> <p>2 Q. And above that there is a reference to the</p> <p>3 6/30 financials.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Do you know what the reference to the 6/30</p> <p>7 financials is?</p> <p>8 A. Yes.</p> <p>9 Q. And what is that reference?</p> <p>10 A. That is referencing the amounts on the</p> <p>11 balance sheet at 6/30 that we provided for the 15(c)</p> <p>12 materials to the board.</p> <p>13 Q. Okay. And does that \$12.3 million include,</p> <p>14 to the best of your knowledge, the principal amount of</p> <p>15 the two notes that we were talking about?</p> <p>16 A. Yes.</p> <p>17 MR. RUKAVINA: Objection. Best evidence.</p> <p>18 THE WITNESS: Yes.</p> <p>19 Q. (BY MR. MORRIS) And how do you know that?</p> <p>20 A. Because I kept their financials, I know for a</p> <p>21 fact that it included all of their outstanding notes</p> <p>22 and it most certainly included these two notes that</p> <p>23 we've been talking about today.</p> <p>24 Q. And to the best of your recollection did</p> <p>25 HCMFA provide the 6/30 financials to the retail board?</p>	<p style="text-align: right;">123</p> <p>1 was given to the retail board?</p> <p>2 A. I likely did. I can't tell you for certain</p> <p>3 that I was on the correspondence.</p> <p>4 Q. Do you recall any discussion at any time that</p> <p>5 the \$12.3 million number in Ms. Thedford's email should</p> <p>6 be changed in the final report to the retail board?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Did anybody ever tell you at any time that</p> <p>9 the \$12.3 million number was incorrect?</p> <p>10 A. No.</p> <p>11 Q. Did anybody ever tell you at any time that</p> <p>12 that number wrongly included the \$7.4 million reflected</p> <p>13 in the two notes?</p> <p>14 A. No.</p> <p>15 Q. Okay. Do you recall that earlier that</p> <p>16 summer -- we looked at Exhibit 15?</p> <p>17 A. Yep.</p> <p>18 Q. And that was an attachment to an email that</p> <p>19 you personally sent to Mr. Dondero. We saw that</p> <p>20 before?</p> <p>21 A. Right.</p> <p>22 Q. And this Exhibit 15, which was attached to</p> <p>23 your email, identifies amounts due and owing from</p> <p>24 NexPoint Advisors; right?</p> <p>25 A. Right.</p>
<p style="text-align: right;">122</p> <p>1 A. Yes.</p> <p>2 Q. And to the best of your knowledge did</p> <p>3 Mr. Dondero or Mr. Waterhouse or anybody in the world</p> <p>4 ever tell you that the financial statements that were</p> <p>5 provided to the retail board were erroneous in any way?</p> <p>6 A. No.</p> <p>7 Q. Did Mr. Dondero or Mr. Waterhouse or anybody</p> <p>8 in the world ever tell you that the 6/30 financials</p> <p>9 that were given to the retail board should not have</p> <p>10 included the \$7.4 million principal amount on the two</p> <p>11 promissory notes?</p> <p>12 MR. RUKAVINA: Objection. Best evidence.</p> <p>13 Answer.</p> <p>14 THE WITNESS: No.</p> <p>15 Q. (BY MR. MORRIS) Do you know whether -- are</p> <p>16 you at all familiar with the Advisors' actual response</p> <p>17 to the retail board in October 2020?</p> <p>18 A. Say that again, please.</p> <p>19 Q. So this email string is October 2020; right?</p> <p>20 A. Right.</p> <p>21 Q. And do you understand that this is kind of a</p> <p>22 discussion between Mr. Waterhouse and Ms. Thedford as</p> <p>23 to how to respond?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen the actual response that</p>	<p style="text-align: right;">124</p> <p>1 Q. And it identifies amounts due and owing for a</p> <p>2 number of different entities, including HCMFA; right?</p> <p>3 A. Correct.</p> <p>4 Q. Do you know whether the amount included for</p> <p>5 HCMFA on Exhibit 15 included the principal amount due</p> <p>6 on the two promissory notes?</p> <p>7 A. It does.</p> <p>8 Q. Did Mr. Dondero or Mr. Waterhouse ever ask</p> <p>9 you why -- withdrawn.</p> <p>10 Did Mr. Dondero or Mr. Waterhouse ever ask</p> <p>11 you how the \$10.5 million number was calculated?</p> <p>12 A. No.</p> <p>13 Q. Did Mr. Dondero or Mr. Waterhouse ever</p> <p>14 suggest to you that the number was incorrect?</p> <p>15 A. No.</p> <p>16 Q. Did Mr. Dondero or Mr. Waterhouse or anybody</p> <p>17 in the world ever question the number that you gave to</p> <p>18 Mr. Dondero in the summer of 2020 concerning the</p> <p>19 principal amount due by HCMFA to HCMLP?</p> <p>20 A. No.</p> <p>21 Q. Have you ever made a payment -- withdrawn.</p> <p>22 Have you ever caused a payment to be made in</p> <p>23 connection with an intercompany loan without receiving</p> <p>24 the prior approval from either Frank Waterhouse or</p> <p>25 Mr. Dondero?</p>

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<p style="text-align: right;">125</p> <p>1 A. No.</p> <p>2 Q. Has anybody ever said to you that you made a</p> <p>3 mistake in applying a payment against principal or</p> <p>4 interest due on an intercompany loan?</p> <p>5 A. No.</p> <p>6 Q. We saw this morning, and we produced to</p> <p>7 Mr. Rukavina and he mentioned earlier, 13-week</p> <p>8 forecasts? Do you understand that?</p> <p>9 A. Yes.</p> <p>10 Q. Did you review the 13-week forecasts</p> <p>11 recently?</p> <p>12 A. Yes.</p> <p>13 Q. And we're talking specifically about the</p> <p>14 13-week forecasts for the November/December 2020 time</p> <p>15 period. Do you understand that?</p> <p>16 A. Yes.</p> <p>17 Q. Based on your review of those forecasts, did</p> <p>18 those forecasts specifically identify the principal and</p> <p>19 interest that were due on the three term notes as of</p> <p>20 December 28, 2020?</p> <p>21 A. Yes.</p> <p>22 Q. And what was the purpose of creating the</p> <p>23 13-week forecasts?</p> <p>24 A. Sure. That was to keep everybody informed</p> <p>25 who was on the cash call, Frank Waterhouse, Jim Seery</p>	<p style="text-align: right;">127</p> <p>1 A. Yes.</p> <p>2 Q. And was that information that was included on</p> <p>3 the reports to Mr. Waterhouse?</p> <p>4 A. Yes.</p> <p>5 Q. And do you recall whether there were any</p> <p>6 specific discussions in November or December of 2020</p> <p>7 concerning those payments -- withdrawn. That wasn't a</p> <p>8 good question.</p> <p>9 Did Mr. Waterhouse or -- withdrawn.</p> <p>10 Did anybody on behalf of HCMS or HCRE ever</p> <p>11 instruct you to make the payments that were due under</p> <p>12 their term notes?</p> <p>13 A. No.</p> <p>14 Q. Did anybody on behalf of NexPoint ever</p> <p>15 instruct you to make a payment that was due at year end</p> <p>16 with respect to the NexPoint term note?</p> <p>17 A. No.</p> <p>18 Q. Were you authorized to make those payments</p> <p>19 without the prior approval of either Mr. Waterhouse or</p> <p>20 Mr. Dondero?</p> <p>21 A. No.</p> <p>22 Q. I think you testified that there were certain</p> <p>23 payments that were made in January 2001 under each of</p> <p>24 the three term notes.</p> <p>25 Do I have that right?</p>
<p style="text-align: right;">126</p> <p>1 and others, keep everybody informed of upcoming</p> <p>2 payments that were due on term loans well in advance.</p> <p>3 Everybody knew about it. It was out there</p> <p>4 for everybody to see that was on these cash calls.</p> <p>5 Q. Now, is it your understanding that</p> <p>6 Mr. Waterhouse -- withdrawn.</p> <p>7 Did you email these forecasts -- withdrawn.</p> <p>8 Did anybody email these forecasts to the best</p> <p>9 of your recollection in late 2020?</p> <p>10 A. Yes.</p> <p>11 Q. And was it sent to the corporate accounting</p> <p>12 group that we saw earlier?</p> <p>13 A. It was probably sent to Frank, Seery, the DSI</p> <p>14 guys that were involved with the cash call.</p> <p>15 Q. Okay. And so did you participate in the</p> <p>16 creation of the 13-week forecasts?</p> <p>17 A. Yes.</p> <p>18 Q. What role did you play in the creation of the</p> <p>19 13-week forecasts?</p> <p>20 A. I was responsible for creating the entire</p> <p>21 thing.</p> <p>22 Q. Okay. And based on the work that you did,</p> <p>23 was one of the purposes to make sure that</p> <p>24 Mr. Waterhouse was aware of all payments that were</p> <p>25 coming due under the intercompany notes?</p>	<p style="text-align: right;">128</p> <p>1 A. Correct.</p> <p>2 MR. RUKAVINA: 2021.</p> <p>3 MR. MORRIS: Thank you very much.</p> <p>4 Q. (BY MR. MORRIS) With that amendment, do you</p> <p>5 understand my question?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know why the three payments were made</p> <p>8 in January of 2021 on each of three term notes?</p> <p>9 A. Because Frank Waterhouse instructed me to do</p> <p>10 so.</p> <p>11 Q. And he had not instructed you to make those</p> <p>12 payments prior to that time?</p> <p>13 A. Correct.</p> <p>14 Q. Did you have to prompt Frank Waterhouse in</p> <p>15 January of 2021 to make those payments?</p> <p>16 A. No.</p> <p>17 Q. So based on the 13-week forecast that you</p> <p>18 prepared and delivered to Mr. Waterhouse, is it your</p> <p>19 understanding that Mr. Waterhouse knew as early as mid</p> <p>20 November 2020 that payments would be due under the</p> <p>21 three term notes at the end of the year?</p> <p>22 A. Yes.</p> <p>23 Q. And, in fact, did HCMS and HCRE and NexPoint</p> <p>24 timely make their installment payments that were due at</p> <p>25 year end 2018?</p>